TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]

No. [illegible]

T. B. COPPAGE, PLAINTIFF IN ERROR,

vs.

THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED AUGUST [illegible], [illegible].

([illegible])

(23,330)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 328.

T. B. COPPAGE, PLAINTIFF IN ERROR,

vs.

THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 31, 1913.

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1 In the Supreme Court of the State of Kansas.

No. 18088.

STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Be it remembered, that on the 29th day of July, A. D. 1912, there was filed in the office of the clerk of the Supreme Court of the state of Kansas, a stipulation and agreement in writing signed by counsel for both the parties hereto, designating such portions of the transcript of record, files and proceedings, as are to be included in the transcript of the record transmitted to the United States Supreme Court in response to a Writ of Error issued by said court, which stipulation and agreement with all the indorsements thereon is in the words and figures as follows, to-wit:

2 In the Supreme Court of the State of Kansas.

No. 18088.

STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto, through R. R. Vermilion, attorney for T. B. Coppage, Plaintiff in Error, and the Honorable John S. Dawson, attorney for the State of Kansas, defendant in error, that the Clerk of the Supreme Court of the State of Kansas in preparing a transcript of the record in the above entitled case to be transmitted to the Supreme Court of the United States, with the writ of error heretofore on July 19, 1912, issued from the said Supreme Court of the United States to the Supreme Court of the State of Kansas in said case, may and shall incorporate in such transcript, and transmit with said writ of error, the following portions of the record, which shall constitute the transcript of record on error herein for the review of this case in the Supreme Court of the United States:

First. The following portions of the transcript of record filed March 27, 1912, in this case in the Supreme Court of the State of Kansas, to be found beginning on the following pages of said transcript of record:

1. Assignment of errors, pp. 1*a* to 4*a*, inclusive.
2. Information with endorsements and filing marks, pp. 1 to 3, inclusive.

3. Motion to quash and set aside information, with introductory statement, filing marks and endorsements, p. 6.
4. Journal Entry of Court overruling motion to quash, etc. with introductory statement, filing marks and endorsements, p. 7.
5. Page 8⅜ of Bill of Exceptions, p. 8⅜.
6. Evidence of A. R. Hedges, including objection to introduction of evidence, ruling and exception, including Exhibit A and all objections, rulings, exceptions etc., pp. 8¾ to 19 inclusive, except and omitting therefrom the constitutions and by-laws
3 of the Switchmen's Union of *of* North America, except the preamble (p. 22) which is to be included, referred to in said record as exhibits B and C. At the end of said evidence of Hedges, Clerk will make notation: "Exhibits B and C omitted by stipulation attached to this record."
7. Page 104½ of said record, p. 104½.
8. Demurrer to evidence, with introductory statement, endorsements, filing marks and ruling of the court, p. 105.
9. Motion to discharge defendant and dismiss case, with introductory statement, endorsements, filing marks and *f*uling of the court, pp. 106 to 108, inclusive.
10. All of page 108½, p. 108½.
11. Motion for new trial, with introductory statement, filing marks, *f*uling of the court and endorsements, pp. 108¾ to 110, inclusive.
12. Motion in arrest of judgment, with introductory statement, endorsements, filing marks and ruling of the court, pp. 110½ to 112, inclusive.
13. Journal Entry, with introductory statement, indorsements, filing marks, pp. 116 to 121, inclusive.
14. Notices of Appeal, with acknowledgments of service thereof, introductory statements, endorsements and filing marks, pp. 130 to 133, inclusive.

Second. This stipulation, with endorsements and filing marks.

Third. Copies of all opinions and of the final judgment made and entered herein in the Supreme Court of the State of Kansas.

Fourth. Clerk's certificate that foregoing is full, true and complete transcript, etc.

Fifth. 1. All papers and files in and concerning the proceedings in error for the review of this case by the Supreme Court of the United States, including copy of petition for writ of error, allowance, endorsements and filing marks; copy of assignment of errors, endorsements and filing marks; copy of order of Chief Justice granting petition for writ of error, endorsements and filing marks; copy of bond with approval endorsed, endorse-

ments and filing marks, together with Clerk's certificate of lodgment of the original bond in his office; original writ of error, allowance, endorsements and filing marks, together with Clerk's certificate of lodgment of the same and of copy thereof for defendant in error in his office; original citation, endorsements and filing marks, together with acknowledgments of service and entry of appearance.

2. Return of writ of error, together with statement of costs.

The Clerk will also index the record so to be transmitted.

It is stipulated and understood by and between the parties hereto that the above and foregoing portions of the record in this
4 case are sufficient for the consideration of the questions to be reviewed in the Supreme Court of the United States and that the omitted portions are unnecessary to such consideration of said questions, and it is further stipulated and understood by and between the parties that the appeal of this case was properly taken to and perfected in the Supreme Court of the State of Kansas, which said appeal resulted in the final judgment and decision complained of by T. B. Coppage, the plaintiff in error, in said proceedings in error for the review of this case in the Supreme Court of the United States.

R. R. VERMILION,
Attorney for T. B. Coppage,
Plaintiff in Error.
JNO. T. DAWSON,
Attorney General of the State of Kansas and
S. N. HAWKES,
Asst. Att'y Gen'l,
Attorneys for State of Kansas,
Defendant in Error.

[Endorsed:] No. 18088. In the Supreme Court of the State of Kansas. State of Kansas, Appellee, vs. T. B. Coppage, Appellant. Stipulation. Filed Jul- 29, 1912. D. A. Valentine, Clerk Supreme Court.

5 Be it further remembered, that on the 27th day of March 1912, there was filed in the office of the clerk of the Supreme Court of the State of Kansas, an assignment of errors, notices of appeal, and transcript of the record in the above entitled case, such portions of which as are designated by the written stipulation of counsel for both parties to appear in this transcript, are in the words and figures as follows, to-wit:—

6 In the Supreme Court of the State of Kansas.

Filed Mar. 27, 1912. D. A. Valentine, Clerk Supreme Court.

STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Assignment of Errors.

The appellant, T. B. Coppage, complains of the State of Kansas, appellee herein, and alleges that on February 12, 1912, at the regular January 1912 term of the District Court of Bourbon County, Kansas, in a case then pending in said court in which the State of Kansas was plaintiff and said T. B. Coppage was defendant, said the State of Kansas, by the consideration of said court, procured a finding of guilty against this appellant, as will more particularly appear from the transcript of the record herein, and recovered a judgment of conviction against this appellant, adjudging him guilty of coercion under Sections 4674 and 4675 of the general statutes of Kansas 1909, the same being Sections 1 and 2 of Chapter 222 of the Session Laws of Kansas 1903, as charged in the information filed in said case, and imposing upon said appellant a fine of Five Hundred (500.00) Dollars and costs, and ordering that this appellant stand committed to the county jail of Bourbon County, Kansas, until the same be paid, and that on the same day said appellant was sentenced accordingly, all of which more particularly appears from the transcript of the record herein.

A transcript of all the record in said case, duly certified by the clerk of the District Court of Bourbon County, Kansas, is hereto attached, marked Exhibit "A" and made a part hereof.

This appellant further alleges that there is error in said judgment, record and the proceedings of said lower court, in each and all of the following particulars, which appellant specifies and assigns as errors herein and which particularly appear from said transcript of the record herein:

1. The court below erred in making and rendering judg-
7 ment of conviction and sentence herein fineing the defendant below and appellant herein in the sum of Five Hundred Dollars and costs and committing him to jail until the same should be paid, to which judgment of conviction and sentence, and each of them, the defendant at the time duly excepted and excepts (Transcript of Record, page 119).

2. Said court below erred in overruling the written motion, duly filed by defendant below, to quash the information filed against him in said case and court, for each and all of the various reasons assigned in said motion, to which ruling of the court in so overruling said motion to quash said information the defendant at the time duly excepted and excepts (Trans. of Rec. p-. 6, 7).

3. Said court below erred in overruling said defendant's objec-

tion, on the trial of said case, to the introduction of any evidence under the said information, for each and all of the various reasons assigned at the time in said objection, to which ruling of the court defendant at the time duly excepted and excepts (Trans. of Rec. p-. 8½, 9, 116, 117).

4. Said court below erred on the trial of said case in admitting, over the objection of the defendant duly made at the time, incompetent, irrelevant, immaterial and inadmissible evidence, to each and all of which said rulings of the court in so admitting said evidence the defendant at the time duly excepted and excepts (Trans. of Rec. p-. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19).

5. Said court below erred in overruling the demurrer duly interposed and filed by this defendant to the evidence of the plaintiff, the State of Kansas, on the trial of this case, for each and all of the various reasons assigned in said demurrer, to which ruling of the court the defendant at the time duly excepted and excepts (Trans. of Rec. p-. 105, 117).

6. Said court below erred in overruling the motion, duly made and filed by the defendant, to discharge defendant and dismiss the case, for each and all of the various reasons assigned in said motion, to which ruling of the court the defendant at the time duly excepted and excepts (Trans. of Rec. p-. 106-8, 117).

8 7. Said court below erred on the trial of said case in finding said defendant guilty, as charged in said information, to which finding of the court the defendant at the time duly excepted and excepts (Trans. of Rec. p-. 108½, 117, 118).

8. Said court below erred in overruling the written motion in arrest of judgment, duly filed below by the defendant, for each and all of the various reasons assigned in said motion, to which ruling of the court the defendant at the time duly excepted and excepts (Trans. of Rec. p-. 111, 112, 118, 119).

9. Said court erred in overruling the written motion for a new trial, duly filed below by the defendant, for each and all of the various reasons assigned in said motion, to which ruling of the court the defendant at the time duly excepted and excepts (Trans. of Rec. p-. 109, 110, 118).

10. Said court below erred in passing sentence and imposing a fine of Five Hundred Dollars and costs upon defendant and ordering him committed to jail until the same should be paid, to which action of the court the defendant at the time excepted and excepts (Trans. of Rec. p. 119).

11. Said court below erred in making and rendering its final judgment of conviction herein, to which judgment of the court the defendant at the time duly excepted and excepts (Trans. of Rec., p. 119).

Wherefore because of each and all of the foregoing errors appellant prays that said judgment and sentence of the District Court of Bourbon County, Kansas, and each of them, may be reversed by the Supreme Court of Kansas; that this cause be remanded to the said lower court with directions that the appellant herein and defendant below be discharged; that appellant may be restored to all rights

which he has lost by reason of said judgment and sentence, and each of them. That the law under which said prosecution was brought and said information herein was filed, to-wit: Sections 4674 and
9 4675 of the General Statutes of Kansas 1909, the same being Sections 1 and 2 of Chapter 222 of the Session Laws of Kansas 1903, be declared invalid as in violation of the constitution of the State of Kansas and in violation of the constitution of the United States, and for such other relief as to the court may seem proper.

R. R. VERMILION,
HUBERT LARDNER,
Attorneys for Appellant.

10 In the District Court of Bourbon County, Kansas.

STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Information.

STATE OF KANSAS,
Bourbon County, ss:

Be it remembered, That Chester A. Ramsey, County Attorney of Bourbon County, Kansas, who prosecutes for and on behalf of the said State of Kansas, in the said County of Bourbon, who is the duly and legally elected and acting County Attorney of Bourbon County, Kansas, comes now here in the said District Court of Bourbon County, Kansas, and doth give the court information that at and within the County of Bourbon and the State of Kansas on or about the 7th day of July, 1911, one A. R. Hedges, was an employee as switchman in the yards at Fort Scott, Kansas, of the St. Louis & San Francisco Railroad Company, a corporation; that at said time and for many years prior thereto the said A. R. Hedges was a member of a labor organization known as the Switchman's Union of North American, and that on said date the above named T. B. Coppage, defendant, was employed by the said St. Louis & San Francisco Railroad Company and was at said time acting as Superintendent for said Railroad Company and as such agent and officer of said corporation the said T. B. Coppage, at said time, did demand and require of the said A. R. Hedges that he resign from and not remain longer a member of said labor organization; and the said T. B. Coppage, then and there said to the said A. R. Hedges that in case he did not resign from and refuse longer to remain a member of said labor organization that he could not remain an employee in the services of said St. Louis & San Francisco Railroad Company.

That then and there the defendant T. B. Coppage presented
11 to the said A. R. Hedges the following writing:

"FORT SCOTT, KANSAS, —— —, 1911.

Mr. T. B. Coppage, Superintendent Frisco Line, Fort Scott:

We, the undersigned have agreed to abide by your request, that is, to withdraw from the Switchman's Union, while in the service of the Frisco Company.

(Signed)

—— ——.
—— ——.
—— ——."

and demanded as a condition of the said A. R. Hedges remaining in the employ of the said St. Louis & San Francisco Railroad Company that he sign and agree to the same; that at same time the said A. R. Hedges refused to sign said writing, and refused to withdraw from the Switchman's Union of North America, and then and there, the said T. B. Coppage discharged the said A. R. Hedges from the service of said St. Louis & San Francisco Railroad Company, for the reason that the said A. R. Hedges would not withdraw from, and resign as a member of said Switchman's Union of America;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Kansas.

Wherefore, the said Chester A. Ramsey, County Attorney as aforesaid, prays the consideration of the court in the premises, that due process of law may be awarded against the said T. B. Coppage, and that he may be held to answer to the State of Kansas, touching and concerning the premises and be made to do therein what to law and justice may appertain.

CHESTER A. RAMSEY,
County Attorney of Bourbon County, Kansas.

12 STATE OF KANSAS,
Bourbon County, ss:

A. R. Hedges being duly sworn on his oath says that he has read and knows the contents of the above and foregoing information and that the statements and allegations therein contained are true.

A. R. HEDGES.

Subscribed and sworn to before me this 15th day of July 1911.

[SEAL.] J. B. CONNOLLY,
Clerk of the District Court of Bourbon County, Kansas.

Endorsed on back: #1731. State of Kansas vs. T. B. Coppage. Information. Filed Jul- 15, 1911. J. B. Connolly, Clerk of Dist. Court. C. A. Ramsey, Co. Att'y.

Witnesses for State.

A. R. Hedges, B. F. Clark, J. C. Vale, B. F. Johnston, John Hartman, George Cowan, C. A. Ramsey, M. J. De Doben, H. P. Hopkins, F. M. Cooper, G. E. De Jean, W. F. Fortney, C. R. Banta, W. F. Bicknell, J. H. Huffman, G. W. Stechel, H. Ward, J. L. Pender, O. D. Lewis, Carl Pender, J. E. Hutchison, A. D. West, Fred Peck, Frosty Francis, J. R. Harris, Willie Schler, Fred Boler, Sim Bramlett.

13 Thereafter, to-wit Oct. 2, 1911, defendant filed his motion herein to quash the said information, a copy of which is as follows:

In the District Court of Bourbon County, Kansas.

#1731.

THE STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Motion to Quash and Set Aside Information.

Comes now the defendant, in the above entitled case, and moves the court to quash and set aside the information filed in this court in this case on the 15th day of July, 1911, for the following reasons:

1. The information filed in this case does not charge the commission by this defendant of a public offense.
2. The facts set forth in the information filed herein, against this defendant, do not constitute a public offense under the laws of the State of Kansas.
3. There is not now, and was not at any of the times named in the information filed herein, any valid law of the State of Kansas making the acts charged in the information a public offense.
4. The information filed herein is not direct and certain, as regards this defendant, and is so uncertain that this defendant cannot plead thereto.

R. R. VERMILION,
Attorney for Defendant T. B. Coppage.

Endorsed on back: #1731. In the District Court of Bourbon County, Kansas. The State of Kansas, plaintiff, vs. T. B. Coppage, Defendant. Motion to quash and set aside information. Filed Oct. 2, 1911. J. B. Connolly, Clerk of Dist. Court.

14 Thereafter, to-wit: December 9, 1911, proceedings were had herein, as follows:

In the District Court of Bourbon County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Journal Entry.

Now on this 1st day of December, 1911, it being an adjourned day of the October, 1911 term of this court, this cause comes on for hearing on the motion of the defendant, T. B. Coppage, to quash and set aside the information filed against him in this court and in this

case on the 15th day of July, 1911. Present the State of Kansas by its attorneys, Chester A. Ramsey, County Attorney of Bourbon Count, Kansas, and Shepherd, Shepherd and Shepherd, and the defendant by his attorneys, R. R. Vermilion, W. F. Jackson and W. F. Lilleston, and the court having heard the argument of counsel and being fully advised in the premises orders and adjudges that said motion of the defendant, T. B. Coppage, to quash and set aside said information be and the same is hereby overruled, to which ruling, order and decision of the court the defendant at the time duly excepted and excepts.

JOHN C. CANNON,
Judge of the District Court of
Bourbon County, Kansas.

O. K.
CHESTER A. RAMSEY,
County Attorney.

O. K.
R. R. VERMILION,
W. F. JACKSON,
W. F. LILLESTON,
Attorneys for Defendant.

Endorsed: #1731. In the District Court of Bourbon County, Kansas. State of Kansas, plaintiff, vs. T. B. Coppage, defendant. Journal entry. Filed Dec. 9, 1911. J. B. Connolly, Clerk of Dist. Court.

15 In the District Court of Bourbon County, Kansas.

No. 1731.

THE STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Bill of Exceptions.

Be it remembered That on July 15, 1911, an information was filed in the above entitled case in the District Court of Bourbon County, Kansas, wherein the State of Kansas was plaintiff and T. B. Coppage was defendant; that on February 12, 1912, the same being one of the judicial days of the January, 1912, term of the District Court of Bourbon County, Kansas, on the regular call of the docket, this case comes on and was called for trial in and before the District Court of Bourbon County, Kansas, on said information so filed herein. Present: plaintiff, the State of Kansas, by C. A. Ramsey, County Attorney of Bourbon County, Kansas, and J. I. Shepherd, and the defendant, T. B. Coppage, in person and by R. R. Vermilion and W. P. Lilleston and Hubert Lardner, his attorneys. Thereupon the defendant, T. B. Coppage, waives arraignment and enters a plea of not guilty to the information and charge herein and the court orders

that a plea of not guilty be entered to said information. Thereupon the parties announce themselves ready for trial, and a jury is waived by the respective parties in open court, and said parties waive any objection that may arise out of the fact that this, February 12, 1912, is a legal holiday, to-wit, Linvcoln's birthday. Thereupon the County Attorney states the case for the State and the plaintiff, the State of Kansas, thereupon introduces the following evidence, and the following proceedings were had:

16 A. R. HEDGES, called as a witness on behalf of the state, being first duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by J. I. SHEPHERD:

Q. State your name to the court.

Defendant objects to the introduction of any evidence under the information filed herein for the following reasons:

1. Because the facts stated do not constitute a public offense.

2. Because the information filed in this case does not charge the commission by this defendant of a public offense.

3. Because the facts set forth in the information filed herein, against this defendant, do not constitute a public offense under the laws of the State of Kansas.

4. Because there is not now, and was not at any of the times named in the information filed herein, any valid law of the State of Kansas making the acts charged in the information a public offense.

5. Because the information filed herein is not direct and certain, as regards the defendant, and is so uncertain that this defendant could not plead thereto.

6. Because the law under which the said information herein against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Section 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, and each and every part thereof, are unconstitutional and void and in violation of Section 1, Article 14 of the Amendment to the Constitution of the United States.

7. Because the law under which the said information filed herein against this defendant is brought and under which the alleged offense herein is charged, to-wit: Section- 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, and each and every part thereof are unconstitutional and void and in violation of Section 1 of the Bill of Rights of the Constitution of the State of Kansas.

8. Because the law under which the said information herein filed against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2 Chapter 222 of the Session Laws of Kansas, 1903, and each and every part thereof, are unconstitutional and void and in violation of Section 16 of Article 2 of the Constitution of the State of Kansas.

9. Because that part of the law, under which said information filed herein against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, is unconstitutional and void and in violation of Section 16, Article 2 of the Constitution of the State of Kansas.

17

Said defendant also files said objections in writing with the Clerk of this Court.

Objection is by the court everruled, to which ruling of the court the defendant at the times duly excepted and excepts.

A. A. R. Hedges.
Q. Where do you live?
A. 203 Blair Avenue.
Q. Fort Scott, Kansas?
A. Yes sir.
Q. Are you a man of family?
A. Yes sir.
Q. You live here with your family?
A. Yes sir.
Q. What does your family consist of?
A. A wife and two children.
Q. What has been your business or occupation for several years last past?
A. Switching cars.
Q. A railroad switchman?
A. Yes sir.
Q. For what company have you worked, if any, in Fort Scott?
A. The St. Louis & San Francisco Railroad Company.
Q. Had you any other means of providing for your family than your labor?
A. No sir.
Q. How long did you work for the defendant railroad company here?
A. Four years.
Q. During all of that time were you a member of any labor organization?

To which defendant objects for the reason it is incompetent, irrelevant, immaterial and assuming an essential fact in the case which has not yet been proven.

18

Objection is by the court overruled; to which ruling of the court the defendant at the time duly excepted and excepts.

A. Yes sir.
Q. What labor organization did you belong to during that period?

To which defendant objects for the reason it is incompetent, irrelevant, immaterial and not the best evidence.

Objection is by the court overruled; to which ruling defendant at the time duly excepted and excepts.

A. The Switchman's Union of North America.

Q. What is the Switchman's Union of North America? If you know, what is the object of the organization?

To which defendant objects for the reason it is incompetent, irrelevant, immaterial and calls for the conclusion of the witness and is not the best evidence.

COURT: Is it a chartered organization?

Mr. SHEPPARD: Yes sir.

Q. Have you got a copy of the constitution and by laws of that organization?

A. Not with me, no sir.

Q. Have you one at your home?

A. I have one at home. One of the late ones also.

State reserves the right to have the Constitution and By-Laws marked the proper exhibits and introduce them in evidence.

Defendant objects for the reason they are incompetent, irrelevant, immaterial, and not the best evidence.

Which objection is overruled by the court, to which ruling defendant at the time duly excepted and excepts.

Q. Do you know T. B. Coppage?

A. Yes sir.

Q. What official position, if any, did he hold on the 7th day of July, 1911?

A. Superintendent.

Q. Superintendent of what?

A. Division Superintendent for the Frisco.

Q. You mean the St. Louis and San Francisco Railroad Company?

A. Yes sir.

19 Q. And division superintendent where?

A. At Fort Scott, Kansas.

Q. How long had he been holding such position, if you know?

A. I don't just remember the length of time; something about three years I should judge.

Q. About three years?

A. Yes sir, at this point.

Q. Mr. Coppage, was he the man who employed men and discharged men when occasion demanded?

Defendant objects for the reason it is leading. Objection overruled, to which ruling of the court defendant at the time duly excepted and excepts.

A. Well I suppose he did employ the men. He didn't employ me.

Q. You were employed before he was superintendent?

A. Yes sir.

Q. You were working here then, as I understand you, before he came?

A. Yes sir.

Q. Did you have any conversation with Mr. Coppage, the defendant, about the 7th of July, 1911?

A. Yes sir.

Q. Where?
A. In his office.
Q. Where?
A. In his office here at Fort Scott, Kansas.
Q. Where were you working at that time?
A. I was working here at Fort Scott, Kansas.
Q. In the Frisco yards?
A. Yes sir.
Q. That is the St. Louis & San Francisco Company's yards?
A. Yes sir.
Q. What conversation did you have, if any, with Mr. Coppage?
A. Well I went in there on the morning of the 7th and he said he had an agreement there he wanted us to sign.
Q. How did you happen to go in there at the time?
A. Well the call boy called me over the telephone the evening of the 6th.

To which defendant objects as hearsay and moves to strike out the answer. Objection and motion overruled, to which ruling defendant excepted and excepts.

Q. What did the call-boy say to you?

Defendant objects for the reason it is hearsay. Objection overruled, and defendant excepted and excepts.

A. He said Mr. Coppage wanted to see me at his office.
Q. When you got in the office what did Coppage say?
A. We asked him what he wanted, and he said he had an agreement to sign.
Q. The first thing you asked him what he wanted?
A. Yes sir.
Q. Was that in answer to the telephone call you had from the call-boy?
A. Yes sir.
Q. Who was the call boy?
A. I could not say. I was asleep at the time he called.
Q. You went from some notice you had from the superintendent that he wanted to see you?

To which defendant objects as hearsay evidence. Objection over ruled, to which ruling defendant excepted and excepts.

A. Yes sir.
Q. Did any one go with you?
A. Yes sir, James Vale was there with me.
Q. What was his business?
A. A switchman.
Q. Working in the same crew you were?
A. Yes sir.
Q. That is, a railroad switchman?
A. Yes sir.
Q. By whom was he employed?
A. The St. Louis & San Francisco Railroad Company.

Q. The same company you were working for?
21 A. Yes sir.
Q. When you got in there you say Mr. Coppage said what?
A. He said he had an agreement he wanted us to sign. And I asked him what the agreement was, and he handed it over and I looked it over.
Q. I hand you a paper marked Ex. "A" is that the instrument he handed to you?
A. That is one just like it. I don't know whether that is it or not.
Q. The same kind of an agreement?
A. Yes sir.
Q. Did you give him the one he handed to you? did you deliver it to him?
A. This is a copy of it.
Q. This is similar to what he handed to you then?
A. Yes sir.
Q. This Ex. "A" is similar to what he handed to you?
A. Yes sir.

State now offers in evidence paper marked Ex. "A."
Defendant objects for the reason it is incompetent, irrelevant, immaterial and not the best evidence.

Q. That was given to you there at the time?
A. Yes sir.
Q. You mean it is the same substance as the other. This contains the same writing that the other did that he wanted you to sign?
A. Yes sir.
Q. And you got it there at the time?
A. Yes sir.
Q. You haven't the other in your possession?
A. No sir.
Q. And never have had?
A. No sir.
Q. It is in Mr. Coppage's possession so far as you know?
A. Yes sir.

Defendant objects to the introduction of Ex. A for the
22 reason it is incompetent, irrelevant, immaterial, and not the best evidence.
Objection overruled. To which ruling of the court the defendant at the time duly excepted and excepts.

A true copy of Ex. "A" is as follows:

"FORT SCOTT, KANSAS, —— —, 1911.

Mr. T. B. Coppage, Superintendent Frisco Lines, Fort Scott:

We, the Undersigned, have agreed to abide by your request, that is, to withdraw from the Switchmen's Union, while in the service of the Frisco Company.

(Signed) —— ——.
—— ——.
—— ——.
—— ——.
—— ——."

Q. What date was this Ex. A presented to you?
A. The 7th day of July, 1911.
Q. Were you on that day a member of the Switchmen's Union of North America?

Defendant objects: incompetent, irrelevant, immaterial, not the best evidence and assuming an essential fact not in evidence.
Which object-s are by the court overruled, to which ruling of the court defendant, at the time, duly excepted and excepts.

A. Yes sir.
Q. How long had you been a member?
A. I had belonged to this order, I guess, 8 or 9 years.
Q. Continuously?
A. Yes sir.
Q. I will ask you, was there any benefits coming to you under the By-laws and Constitution of the Switchmen's Union of North America that you would lose, had you complied with the request of Mr. Coppage?

To which defendant objects for the reason it is incompe-
23 tent, irrelevant, immaterial, not the best evidence, and calling for a conclusion of the witness.
Mr. SHEPPARD: I want to show he had insurance in that order and if he withdrew from the Union at the request of Mr. Coppage his family would lose the benefit of that.
Objection overruled. To which ruling of the court the defendant at the time duly excepted and excepts.

A. Yes sir.
Q. What was that benefit you would lose?

To which defendant objects for the reason it is incompetent, irrelevant, immaterial, and not the best evidence, and calling for a conclusion of the witness.
Objection overruled. To which ruling of the court the defendant at the time duly excepted and excepts.

A. Well I was carrying Fifteen Hundred Dollars insurance.
Q. In the Switchman's Union?
A. Yes sir.
Q. Do you know what would occur under the rules of the order, in case you withdrew from it?

Defendant objects: incompetent, irrelevant, immaterial, not the best evidence and calling for a conclusion of this witness.
Objection overruled. To which ruling of the court, the defendant, at the time, duly excepted and excepts.

A. Well I would have to drop my insurance and have no protection from that order.
Q. How much in all had you, approximately, paid out on that insurance policy?

Defendant objects: incompetent, irrelevant, immaterial, not the best evidence and calling for his conclusion.

Objection overruled. To which ruling of the court the defendant at the time, duly excepted and excepts.

A. Well I could not exactly say the exact amount.

Q. I am not asking you for the exact amount. Approximately for the nine years you had been in?

Defendant objects for the reason it is incompetent, irrelevant, immaterial, not the best evidence and calling for the conclusion of the witness.

Objection overruled. To which ruling of the court the defendant, at the time, duly excepted and excepts.

A. I suppose it would run up to two or three hundred dollars.

A. Isn't it very much more than that? what do you pay each month?

24 Defendant objects for the reason it is incompetent, irrelevant, immaterial, not the best evidence, and calls for a conclusion of the witness.

Objection overruled. To which ruling of the court defendant, at the time, duly excepted and excepts.

A. Two Dollars and seventy cents per month.

Q. When this Ex. A was presented to you, or the original of it, what did Mr. Coppage say to you?

A. He said I would have to sign that agreement or he would have to discharge me.

Q. What did you say?

A. I told him he would have to discharge me; I had belonged to this order too long to withdraw at that time; I had paid out too much money.

Q. Did you explain to him about your insurance?

A. Yes sir.

Q. What did he say?

Defendant objects for the reason it is incompetent, irrelevant and immaterial.

Objection overruled; to which ruling of the court the defendant, at the time, duly excepted and excepts.

A. He said he would have to discharge me or else I would have to sign this waiver in order to work for the Frisco.

Q. Did you sign it?

A No sir.

Q. What occurred?

A. He discharged me.

Q. You have not been in the employ of the company since?

A. No sir.

Q. Fort Scott, the place where you talked with Mr. Coppage that day and where you worked, is in what county and state?

A. In Bourbon County, Kansas.

Q. At the time Mr. Coppage talked with you here, he was superintendent of the Frisco Railroad Company?

Defendant objects: calling for a conclusion.

Objection overruled; to which ruling of the court the defendant at the time duly excepted and excepts.

25 A. Yes sir.

Q. The St. Louis & San Francisco Railroad Company for whom Mr. Coppage worked was a corporation was it, as you understand it?

Defendant objects: incompetent, irrelevant, immaterial, and not the best evidence.

Objection overruled; to which ruling of the court the defendant at the time duly excepted and excepts.

A. Yes sir.

Q. What day did he discharge you?

A. On the 7th day of July, 1911.

Q. That is the same day he asked you to sign this agreement?

A. Yes sir.

Q. And asked you to withdraw from the Union?

A. Yes sir.

Q. What have you to show your right to recover any benefits in case of your being injured, or your family to recover in case of your death, from your Swithmen's Union, or had you at the time you were discharged?

Defendant objects: incompetent, irrelevant, immaterial, not the best evidence, and calling for a conclusion.

Objection overruled; to which ruling of the court the defendant, at the time, duly excepted and excepts.

A. I am supposed to have a certificate but I have lost mine. I have sent for another one.

Defendant moves that the answer be stricken out as a mere conclusion and supposition of the witness.

Motion overruled; to which ruling of the court the defendant, at the time, duly excepted and excepts.

Q. Here are these two constitutions and By-Laws, I want them attached here and marked Exhibits B and C.

Books marked Ex. B and Ex. C.

State now offers in evidence Ex. B and Ex. C.

Defendant objects to the introduction of Ex. B and Ex. C in evidence for the reason that they are incompetent, irrelevant, immaterial, not the best evidence, and no proper foundation has been laid for their introduction.

Objections overruled; to which ruling of the court, defendant, at the time, duly excepted and excepts.

A true copy of Ex. B is in words and figures following, to-wit:

(Exhibits B and C omitted by stipulation attached to this record.)

26 *Preamble.*

The Objects of the Switchmen's Union.

1st. Benevolence.—To unite and promote the general welfare and advance the interests—social, moral and intellectual—of its members; benevolence, very needful in a calling as hazardous as ours, has led to the organization of this Union.

2d. Hope.—Believing that it is for the best interests, both of our members and their employers, that a good understanding should at all times exist between them, it will be the constant endeavor of this Union to establish mutual confidence and create and maintain harmonious relations between employer and employee.

3d. Protection.—By kindly bearing with each others' weaknesses, aiding with our counsel distressed or erring brothers, and to exercise, at all times, its beneficial influence, in the interest of right and justice. Such are the aims and purposes of the Switchmen's Union of North America.

4th. Our Watchword.—What grander precept can be laid down than the beautiful language of our watchword, "The injury of one is the concern of all," for if these simple words were lived up to (and we trust they may be), then would labor be able to lift her proud head, and control the destiny of the world.

27 Thereupon, the above and foregoing being all of the evidence offered or introduced by or on behalf of the plaintiff, the State of Kansas, the said plaintiff, having introduced all of its evidence in support of said information and charge, rests.

28 Thereupon, on the 12th day of February, 1912, at the close of the testimony introduced on behalf of the State the defendant filed a demurrer to the evidence, as follows:

In the District Court of Bourbon County, Kansas.

No. 1731.

THE STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Demurer to the Evidence.

Comes now the defendant, T. B. Coppage, and demurs to the evidence introduced by the State of Kansas, plaintiff herein, for the following reasons:

1. Because said evidence is insufficient to and does not prove the commission by this defendant of a public offense.

2. Because said evidence is insufficient to and does not prove the commission by the defendant of a public offense under the laws of the State of Kansas.

3. Because said evidence is insufficient to and does not prove the commission by this defendant of a public offense under any valid law or laws of the State of Kansas.

4. Because said evidence is insufficient to and does not prove a cause of action in favor of the plaintiff, the State of Kansas, and against this defendant.

R. R. VERMILION &
W. F. LILLESTON,
Attorneys for Defendant.

Endorsed: In the District Court of Bourbon County, Kansas. The State of Kansas vs. T. B. Coppage. No. 1731. Demurrer to Evidence. Filed 2/12/1912. J. B. Connolly, Clerk.

Which demurrer is by the court overruled, to which ruling of the court the defendant at the time duly excepted and excepts.

29 Thereafter, to-wit: February 12, 1912, defendant filed his motion herein asking that he be discharged and the case dismissed. A true copy of said motion is as follows:

In the District Court of Bourbon County, Kansas.

No. 1731.

THE STATES OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Motion to Discharge Defendant and Dismiss Case.

Comes now the defendant, T. B. Coppage, and moves the court to discharge the defendant and dismiss this case for each and all of the following reasons, to-wit:

1. Because the facts stated do not constitute a public offense.

2. Because the information filed in this case does not charge the commission by this defendant of a public offense.

3. Because the facts set forth in the information filed herein, against this defendant, do not constitute a public offense under the laws of the State of Kansas.

4. Because there is not now, and was not at any of the times named in the information filed herein, any valid law of the State of Kansas making the acts charged in the information a public offense.

5. Because the information filed herein is not direct and certain, as regards the defendant, and is so uncertain that this defendant could not plead thereto.

6. Because the law under which the said information herein against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, and each and every part

thereof, are unconstitutional and void and in violation of Section 1, Article 14 of the Amendments to the Constitution of the United States.

30 7. Because the law under which the said information filed herein against this defendant is brought and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2 Chapter 222 of the Session Laws of Kansas 1903 and each and every part thereof are unconstitutional and void and in violation of Section 1 of the bill of rights of the Constitution of the State of Kansas.

8. Because the law under which the said information herein filed against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, and each and every part thereof, are unconstitutional and void and in violation of Section 16 of Article 2 of the Constitution of the State of Kansas.

9. Because that part of the law, under which said information filed herein against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, is unconstitutional and void and in violation of Section 16, Article 2 of the Constitution of the State of Kansas.

10. Because the evidence introduced herein is insufficient to and does not prove the commission by this defendant of a public offense.

11. Because the evidence introduced herein is insufficient to and does not prove the commission by the defendant of a public offense under the laws of the State of Kansas.

12. Because the evidence introduced herein is insufficient to and does not prove the commission by this defendant of a public offense under any valid law or laws of the State of Kansas.

31 13. Because the evidence introduced herein is insufficient to and does not prove a cause of action in favor of the plaintiff, the State of Kansas, and against this defendant.

R. R. VERMILION AND
W. F. LILLESTON,
Attorneys for Defendant.

Endorsed on back: #1731. In the District Court of Bourbon County, Kansas. State of Kansas, pl'ff, vs. T. B. Coppage, Def't. Motion to discharge defendant and dismiss case. Filed 2/12/1912. J. B. Connolly, Clerk.

Which motion is by the court everruled, to which ruling defendant, at the time, duly excepted and excepts.

32 Thereupon the defendant announces that he does not desire to offer any evidence and the court, having heard the evidence offered by the State of Kansas, and the argument of counsel and

being fully advised in the premises finds the defendant, T. B. Coppage, guilty as charged in said information, to which action of the court in so finding the defendant guilty the defendant at the time duly excepted and excepts.

33 Thereafter to-wit: on the 12th day of February, 1912, defendant filed his motion for new trial, as follows:

In the District Court of Bourbon County, Kansas.

No. 1731.

THE STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Motion for New Trial.

Comes now the defendant, T. B. Coppage, and moves the court to vacate and set aside the court's finding of guilty against defendant and for a new trial herein, for each and all of the following reasons, to-wit:

1. That the court erred in overruling the defendant's objection to the introduction of any evidence under information filed herein against said defendant.

2. That the court, over the objection and exception of the defendant duly made at the time, admitted illegal testimony and incompetent, irrelevant and immaterial evidence and that said testimony and evidence was prejudicial to the rights of this defendant and that the court erred in admitting the same.

3. That the court erred in overruling defendant's demurrer to the evidence of the State of Kansas, plaintiff, for the various reasons assigned in said demurrer at the time.

4. That the court erred in overruling said defendant's motion to discharge the defendant and dismiss this case, for the various reasons assigned in said motion at the time.

5. That the court's finding of guilty herein against defendant is contrary to the law.

6. That the Court's finding of guilty herein against the defendant is contrary to Section 1, Article 14 of the Amendments to the Constitution of the United States.

34 7. That the Court's finding of guilty herein against the defendant is contrary to Section 1 of the Bill of Rights of the Constitution of the State of Kansas.

8. That the court's finding of guilty herein against the defendant is contrary to Section 16, Article 2 of the Constitution of the State of Kansas.

9. That the court's finding of guilty herein against the defendant is contrary to the evidence.

10. That the court erred in overruling the defendant's motion to quash the information filed herein against said defendant.

11. That neither the facts stated in the said information, nor the facts proved on the trial hereof, did then or do now constitute a public offense.

12. That neither the facts stated in said information, nor the facts proved on the trial hereof, did then or do now constitute a public offense under the laws of the State of Kansas.

13. That neither the facts stated in said information, nor the facts proved on the trial hereof, did then or do now constitute a public offense under any valid law of the State of Kansas.

14. Because of abuse of discretion on the part of the court, which was duly objected and excepted to at the time by the defendant.

15. Because of erroneous rulings on the part of the court, duly objected and excepted to at the time by defendant.

R. R. VERMILION,
W. F. LILLESTON &
HUBERT LARDNER,
Attorneys for Defendant.

Endorsed: Filed 2/12/1912. J. B. Connolly, Clerk.

Said motion for new trial overruled, to which ruling of the court defendant duly excepted and excepts.

35 After the court's finding of guilty and on February 12, 1912, defendant filed his motion in arrest of judgment, a copy of same being in words and figures following to-wit:

In the District Court of Bourbon County, Kansas.

No. 1731.

THE STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Motion in Arrest of Judgment.

Comes now the defendant, T. B. Coppage, after the court's finding of guilty against defendant herein and before judgment of sentence, and moves the court that no judgment be rendered on the court's finding herein, and to arrest judgment herein, for each and all of the following reasons, to-wit:

1. Because the facts stated do not constitute a public offense.

2. Because the information filed in this case does not charge the commission by this defendant of a public offense.

3. Because the facts set forth in the information filed herein, against this defendant, do not constitute a public offense under the laws of the State of Kansas.

4. Because there is not now, and was not at any of the times named in the information filed herein, any valid law of the State of Kansas making the acts charged in the information a public offense.

5. Because the information filed herein is not direct and certain, as regards this defendant, and is so uncertain that this defendant could not plead thereto.

6. Because the law under which the said information herein against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session laws of Kansas, 1903, and each and every part thereof, are unconstitutional and void and in violation of
36 Section 1, Article 14 of the Amendments to the Constitution of the United States.

7. Because the law under which the said information filed herein against this defendant is brought and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, and each and every part thereof are unconstitutional and void and in violation of Section 1 of the Bill of Rights of the Constitution of the State of Kansas.

8. Because the law under which the said information herein filed against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas 1903, and each and every part thereof, are unconstitutional and void and in violation of Section 16 of Article 2 of the Constitution of the State of Kansas.

9. Because that part of the Law, under which said information filed herein against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, is unconstitutional and void and in violation of Section 16, Article 2 of the Constitution of the State of Kansas.

R. R. VERMILION AND
W. F. LILLESTON,
HUBERT LARDNER,
Attorneys for Defendant.

Endorsed on back: #1731. In the District Court of Bourbon County, Kansas. State of Kansas, pl'ff, vs. T. B. Coppage, Def't. Motion in arrest of Judgment. Filed 2/12/1912. T. B. Connolly, Clerk.

The Court overruled said motion, to which ruling defendant duly excepted and excepts.

37 Thereafter, to-wit: February 19, 1912, Journal Entry filed as follows:

In the District Court of Bourbon County, Kansas.

No. 1731.

STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Journal Entry.

Now on this 12th day of February, 1912, the same being one of the judicial days of the regular January 1912 term of the District Court of Bourbon County, Kansas, this cause comes on and is called for trial on the information filed herein. Present: plaintiff, the State of Kansas, by C. A. Ramsey, County Attorney of Bourbon County, Kansas, and J. I. Sheppard, and the defendant, T. B. Coppage, in person and by R. R. Vermilion and Hubert Lardner, his attorneys. The defendant, T. B. Coppage, waives arraignment and enters the plea of not guilty to the information and charge herein and it is by the court ordered that a plea of not guilty be entered to said information and said plea is so entered of record.

Thereupon the parties announce themselves ready for trial and a jury is waived by the respective parties in open court and said parties waive any objection that may arise out of the fact that this, February 12, 1912, is a legal holiday, to-wit, Lincoln's birthday.

Thereupon the said County Attorney stated the case for the State and the State thereupon offered to introduce its evidence in support of said information. Whereupon the defendant objects to the introduction of any evidence under said information for the various reasons assigned at the time and said defendant at the time also filed with the Clerk of this Court his written objection to the introduction of any evidence under said information; and after argument of counsel the said objection to the introduction of evidence was duly submitted to the Court and the Court being fully advised in the
38 premises denies and overrules defendant's said objection to the introduction of evidence under the information, to which action of the court in denying and overruling defendant's said objection to the introduction of evidence under said information the defendant at the time duly excepts. Thereupon on the same day the plaintiff, the State of Kansas, introduces its evidence in support of said information and rests.

Thereupon the defendant interposes and files his written demurrer to the evidence of the plaintiff, the State of Kansas; and after argument of counsel the said demurrer to the evidence is duly submitted to the court and the court being fully advised in the premises denies and overrules defendant's said demurrer to the evidence, to which action of the court in denying and overruling defendant's said demurrer to the evidence the defendant at the time duly excepts.

Thereupon the defendant files his written motion to discharge defendant and dismiss the case; and after argument of counsel the said

motion to discharge defendant and dismiss the case is duly submitted to the court and the court being fully advised in the premises orders and adjudges that said motion to discharge the defendant and dismiss the case be and it is hereby overruled, to which action of the court in denying and overruling defendant's said motion to discharge defendant and dismiss the case the defendant at the time duly excepts.

Thereupon the defendant announces that he does not desire to offer any evidence and the court, having heard the evidence offered by the state and the argument of counsel and being fully advised in the premises finds the defendant guilty, as charged in said information, to which action of the court in so finding the defendant guilty the defendant at the time duly excepts.

Thereupon on the same day, to-wit: February 12, 1912, the defendant, after said finding of guilty by the court and before sentence is passed or judgment rendered on the finding of the court, duly files his motion for a new trial herein. Thereupon and on the same date this cause comes on for hearing on defendant's said motion for a new trial herein. Present: the plaintiff, The State of Kansas, by
39 C. A. Ramsey, County Attorney of Bourbon County, Kansas, and J. I. Sheppard; and the defendant, T. B. Coppage, appearing in person and by his attorneys, R. R. Vermilion and Hubert Lardner, and after argument of counsel the said motion for a new trial is duly submitted to the Court and the Court being fully advised in the premises orders and adjudges that said motion for a new trial be, and the same is hereby overruled, to which action of the court in denying and overruling the defendant's said motion for a new trial the defendant at the time duly excepts.

Thereupon on the same day, to-wit: February 12, 1912, the defendant, after said finding of guilty and before sentence is passed or judgment rendered on the finding of the court, duly files his motion in arrest of judgment herein and on the same day this cause comes on for hearing on defendant's said motion in arrest of judgment. Present: the plaintiff, the State of Kansas, by C. A. Ramsey, County Attorney of Bourbon County, Kansas, and J. I. Sheppard, and the defendant in person and by his attorneys, R. R. Vermilion and Hubert Lardner, and after argument of counsel said motion in arrest of judgment is duly submitted to the Court and the Court being fully advised in the premises orders and adjudges that said motion be, and the same is hereby, denied and overruled, to which action of the court in denying and overruling defendant's said motion in arrest of judgment the defendant at the time excepts.

And afterwards on the same day to-wit: February 12, 1912, this cause comes on for hearing, for judgment and sentence on the court's said finding of guilty herein. Present: the plaintiff, the State of Kansas, by C. A. Ramsey, County Attorney of Bourbon County, Kansas, and J. I. Sheppard; and the defendant in person and by his attorneys R. R. Vermilion and Hubert Lardner; and the court then and there informed the defendant of the court's said finding of guilty herein and upon being asked by the court whether he had any legal cause to show why judgment should not be pronounced against

him, said defendant assigns no legal cause and it is therefore by the court

Ordered, adjudged and decreed that said defendant, T. B.
40 Coppage be, and he is hereby, fined in the sum of Five Hundred ($500.00) Dollars and costs of this action, taxed at $—, and stand committed to the jail of Bourbon County, Kansas, until the same shall be paid, to which judgment and sentence of the court, and each of them, the defendant at the time duly excepts.

Thereupon on the same day, to-wit: February 12, 1912, defendant duly files herein his written motion for the court to fix the sum in which said defendant shall give good and sufficient bond and to stay execution of judgment and sentence herein, and on the same day, to-wit: February 12, 1912, this cause comes on for hearing on the defendant's said motion to fix the amount of bond and stay execution. Present: the plaintiff, the State of Kansas, by C. A. Ramsey, County Attorney of Bourbon County, Kansas, and J. I. Sheppard; and the defendant in person and by his attorneys, R. R. Vermilion and Hubert Lardner, and after argument of counsel said motion is duly submitted to the Court and it appearing to the court that notice of appeal has been duly served upon and service thereof acknowledged by the said County Attorney and the Clerk of this Court and said notice of appeal and acknowledgment of service duly filed with the clerk of this court, and the court being fully advised in the premises orders and adjudges that said motion be, and it is hereby granted and sustained and fixes the amount of said bond, so to be given by the defendant and approved by the Clerk of this Court, at Fifteen Hundred ($1,500.00) Dollars, upon the giving, approval and filing of which the execution of judgment and sentence shall be stayed pending appeal to and in the Supreme Court of the State of Kansas, and the defendant discharged from custody. And afterwards on the same day, to-wit: February 12, 1912, present: the plaintiff, the State of Kansas, by C. A. Ramsey, County Attorney of Bourbon County, Kansas, and J. I. Sheppard, and the defendant in person and by his attorneys, R. R. Vermilion and Hubert Lardner, it appearing to the court that said bond has been so given and filed with good and sufficient surety, approved by the clerk of this court, said notice of appeal having been properly served, service acknowledged and filed, it is ordered that execution of the judgment of con-
41 viction and sentence herein be, and it is hereby, stayed pending appeal to and in the Supreme Court of the State of Kansas, and the defendant is hereby discharged from custody.

And afterwards on the same day, to-wit: February 12, 1912, the said defendant in open court moves the court to extend to April 5, 1912, the time for preparing, serving, signing, settling and filing his bill of exceptions in this case for causes assigned at the time. Present: The plaintiff, the State of Kansas, by C. A. Ramsey, County Attorney of Bourbon County, Kansas, and J. I. Sheppard, and defendant in person and by his attorneys, R. R. Vermilion & Hubert Lardner; after argument of counsel said motion is duly submitted to the court and the court being fully advised in the premises,

It is hereby ordered by the Court that for good cause shown the

time to prepare, settle, sign and file defendant's bill of exceptions in this case be, and it is hereby, extended to April 5, 1912.

Dated at Ft. Scott, Bourbon County, Kansas, February 19, 1912.

JOHN C. CANNON, *Judge.*

O. K.
CHESTER A. RAMSEY &
J. I. SHEPPARD,
County Att'y for Bourbon County, Kansas.

O. K.
R. R. VERMILION &
HUBERT LARDNER,
Attorneys for Defendant.

Endorsed on Back: No. 1731. In the District Court of Bourbon County, Kansas. State of Kansas, plaintiff, vs. T. B. Coppage, Defendant. Journal Entry. Filed 2/19/1912. J. B. Connolly, Clerk of District Court.

42 Thereafter, to-wit, on March 22, 1912, said T. B. Coppage, Defendant and Appellant served the following notice of appeal and filed the same together with acknowledgment of service thereof:

In the District Court of Bourbon County, Kansas.

No. 1731.

STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Notice of Appeal.

To J. B. Connolly Clerk of the District Court, Bourbon County, Kansas:

You are hereby notified that the appellant, T. B. Coppage, defendant in the above entitled case, appeals to the Supreme Court of the State of Kansas, from the judgment of conviction of the District Court of Bourbon County, Kansas, made and rendered on February 12, 1912, finding said T. B. Coppage guilty and imposing upon said T. B. Coppage, a sentence of $500 fine and costs, in the above entitled case, and under the information filed therein; and said appellant, T. B. Coppage, appeals from the ruling, order and decision of said Court in overruling the said defendant, Coppage's motion to quash the information filed against him in the above entitled case in said court; and from the ruling, order and decision of said court overruling the said defendant, Coppage's objection to the introduction of any testimony under said information; and from the various rulings, orders and decisions of said court overruling said defendant, Coppage's various objections to the introduction of incompetent, irrelevant, immaterial, improper and inadmissible evidence on the

trial of said case; and from the ruling, order and decision of said court in overruling said defendant, Coppage's demurrer to the evidence of the plaintiff, the State of Kansas, on the trial of said case; and from the ruling, order and decision of said court on said trial in overruling said defendant, Coppage's motion to discharge the defendant and dismiss the case; and from the ruling, order and decision of said Court in finding said defendant, Coppage, guilty, as
43 charged in said information; and from the ruling, order and decision of said court in overruling said defendant, Coppage's motion for a new trial; and from the ruling, order and decision of said court in overruling said defendant, Coppage's motion in arrest of judgment; and from the ruling, order and decision of said court in passing sentence and imposing said fine of $500 and costs upon said defendant, Coppage; and from the court's final judgment in said case rendered and made on Feb. 12, 1912; and from every ruling, order, decision and judgment of said court in said case, to each and every one of which rulings, orders, decisions and judgments of said court, the said defendant, Coppage, at the time duly objected and excepted, and objects and excepts. Dated this March 22nd, 1912.

R. R. VERMILION &
HUBERT LARDNER,
Attorneys for Appellant & Defendant T. B. Coppage.

Service of the above and foregoing notice of appeal and exact copy thereof is hereby acknowledged to have been made on this March 22nd, 1912.

[SEAL.] J. B. CONNOLLY,
Clerk of the District Court of Bourbon County, Kansas.

Endorsed on back: No. 1731. In the District Court of Bourbon County, Kansas. State of Kansas, Pl'ff, vs. T. B. Coppage, Def't. Notice of Appeal, &c. Filed March 22, 1912. J. B. Connolly, Clerk of Dist. Court.

44 Thereafter, to-wit, on March 22, 1912, said T. B. Coppage, Defendant and Appellant, served the following notice of appeal, and filed the same together with acknowled-ment of service thereof:

In the District Court of Bourbon County, Kansas.

No. 1731.

STATE OF KANSAS, Plaintiff,
vs.
T. B. COPPAGE, Defendant.

Notice of Appeal.

To A. C. Ramsey, County Attorney of Bourbon County, Kansas:

You are hereby notified that the appellant, T. B. Coppage, defendant in the above entitled case, appeals to the Supreme Court of

the State of Kansas, from the judgment of conviction of the District Court of Bourbon County, Kansas, made and entered on February 12, 1912, finding said T. B. Coppage guilty and imposing upon said T. B. Coppage, a sentence of $500 fine and costs, in the above entitled case, and under the information filed therein; and said appellant, T. B. Coppage, appeals from the ruling, order and decision of said Court in overruling the said defendant, Coppage's motion to quash the information filed against him in the above entitled case in said court; and from the ruling, order and decision of said court overruling the said defendant, Coppage's objection to the introduction of any testimony under said information; and from the various rulings, orders and decisions of said court overruling said defendant, Coppage's various objections to the introduction of incompetent, irrelevant, immaterial, improper and inadmissible evidence on the trial of said case; and from the ruling, order and decision of said court in overruling said defendant, Coppage's demurrer to the evidence of the plaintiff, the State of Kansas, on the trial of said case; and from the ruling, order and decision of said court on said trial in overruling said defendant, Coppage's motion to discharge the defendant and dismiss the case; and from the ruling, order and decision of said Court in finding said defendant, Coppage, guilty, as charged in said
45 information; and from the ruling, order and decision of said court in overruling said defendant, Coppage's motion for a new trial; and from the ruling, order and decision of said court in overruling said defendant, Coppage's motion in arrest of judgment; and from the ruling, order and decision of said court in passing sentence and imposing said fine of $500 and costs upon said defendant, Coppage; and from the court's final judgment in said case rendered and made on Feb. 12, 1912; and from every ruling, order, decision and judgment of said court in said case, to each and every one of which rulings, orders, decisions and judgments of said court, the said defendant, Coppage, at the time duly objected and excepted, and objects and excepts. Dated this March 22nd, 1912.

R. R. VERMILION &
HUBERT LARDNER,
Att'ys for Appellant & Defendant T. B. Coppage.

Service of the above and foregoing notice of appeal and exact copy thereof is hereby acknowledged to have been made on me this March 22nd, 1912.

C. A. RAMSEY,
County Attorney of Bourbon County, Kansas.

Endorsed on back: No. 1731. In District Court of Bourbon County, Kansas. State of Kansas, Pl'ff, v. T. B. Coppage, Def't. Notice of Appeal &c. Filed March 22, 1912. J. B. Connolly, Clerk of Dist. Court.

46 Be it further remembered, that afterwards on Friday the 7th day of June A. D. 1912, the same being one of the regular judicial days of the January 1912 term of the supreme court

of the state of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding among others was had and remains of record in the words and figures as follows to-wit:

47 In the Supreme Court of the State of Kansas, Friday, June 7, 1912.

No. 18088.

THE STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Journal Entry of Submission.

This cause comes on to be heard on the motion of appeal, transcript of the judgment and abstract of the record of the district court of Bourbon county; thereupon after oral argument by John S. Dawson, Attorney General, and by Lee Bond for the State, and by W. F. Lilliston for T. B. Coppage, and by James G. Sheppard as a friend of the court, said cause is submitted on brief of counsel for both parties and taken under advisement by the court.

48 Be it further remembered, That afterwards on Saturday the 6th day of July A. D. 1912, the same being one of the regular judicial days of the July 1912 term of the supreme court of the state of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding among others was had and remains of record in the words and figures as follows to-wit:

49 In the Supreme Court of the State of Kansas, Sat., July 6, 1912.

No. 18088.

THE STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Journal Entry of Decision.

This cause comes on for decision; and thereupon it is ordered and adjudged that the judgment of the court below be affirmed. It is further ordered that the appellant pay the costs of this case in this court taxed at $—, and hereof let execution issue.

50 And on the same day, to-wit, the 6th day of July, A. D. 1912, there was filed in the office of the clerk of the supreme court of the state of Kansas, the court's written opinion, together with the syllabus attached thereto, which opinion and syllabus are in the words and figures as follows, to-wit:

51 No. 18088.

THE STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Appeal from Bourbon County, Affirmed.

Syllabus by the Court.

SMITH, *J.:*

1. An employer has no inherent right to coerce an employee to make a written or verbal contract, as a condition of remaining in his employment, not to become or remain a member of a labor organization.
2. The legislature, deeming such coercion against public policy, violated no constitutional rights of employers in the enactment of sections 4674 and 4675 of the General Statutes of 1909, and such sections are valid.

Johnston, C. J., Burch, J., Mason, J., Benson, J., concurring.
Porter, J., and West, J., dissenting.
A true copy.
Attest:

____ ____
Clerk Supreme Court.

52 The opinion of the court was delivered by SMITH, *J.:*

About July 1, 1911, one A. R. Hedges was employed as a switchman in the yards of the St. Louis and San Francisco Railway Company at Fort Scott, Kansas, and was a member of a labor organization called the Switchman's Union of North America. The appellant was employed by said railway company as superintendent. The appellant, as such superintendent, requested Hedges to sign an agreement which he presented to Hedges in writing and informed him that if he did not sign it he could not remain in the employ of the railway company. The following is the writing presented.

"FORT SCOTT, KANSAS, ____ —, 1911.

Mr. T. B. Coppage, Superintendent Frisco Line, Fort Scott:

We, the undersigned have agreed to abide by your request, that is, to withdraw from the Switchman's Union, while in the service of the Frisco Company.

(Signed) ____ ____.
____ ____.
____ ____."

Hedges refused to sign the writing and refused to withdraw from the labor organization. Thereupon appellant, as such superintendent, discharged Hedges from the service of the railway company.

Thereafter this criminal action was instituted by information, setting forth, in substance, the above facts. The appellant moved to

quash the information on several grounds, the principal of which was that the information charged no public offense under the laws of the state of Kansas, and that there was no valid law making the acts charged in the information a public offense. The motion was overruled. The case came regular on for trial, a jury was waived, and the parties stipulated that the case be tried *to* the court. Arraignment was waived and a plea of not guilty entered. Thereupon the state offered evidence of the facts above stated and the appellant submitted the case without evidence. On considera-
53 tion thereof the court found the appellant guilty as charged. Motions for new trial and in arrest of judgment were overruled and proper exceptions saved. The only question presented on the appeal is the validity of sections 4674 and 4675 of the General Statutes of 1909, which read:

"SEC. 4674. * * * That it shall be unlawful for any individual or member of any firm, or any agent, officer or employé of any company or corporation to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment, or continuing in the employment of such individual, firm or corporation."

"SEC. 4675. * * * Any individual or member of any firm or any agent, officer or employé of any company or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars or imprisoned in the county jail not less than thirty days."

Each party, in argument, assumed that if section 4675, making it a misdemeanor to do any of the things denounced as unlawful in section 4674 is constitutional and valid then the ruling on the motion to quash the information and the final judgment of the court should be affirmed, otherwise the ruling and judgment of the court should be reversed.

Our attention has been called to no other decision upon a statute, except The State ex rel. v. Orin Daniels, et al., (Minnesota, 1912), like the statute in question. The statute of Minnesota, the validity of which was involved in the decision, is practically the same as ours. The syllabus reads:

"Under the decision of the supreme court of the United States in Adair v. United States, 208 U. S. 161, which this court must follow and apply, it is held that a criminal complaint based on section 5097 R. L. 1906, which merely alleges that the employer required the employé to enter into a verbal agreement not to remain a member of a labor organization as a condition of retaining his employment, does not state a criminal offense."

54 The relator was charged and had been convicted of requiring an employee of a railroad company, as a condition of remaining in such employ, to enter into a verbal agreement not to remain a member of a certain labor organization. He was convicted and sentenced to jail in the custody of the sheriff. The district

court in a habeas corpus proceeding released him from custody. The case in the supreme court was on the appeal of the sheriff from that judgment.

It will be observed that — Minnesota decision is based upon the Adair case. In the latter case the accused was not convicted of requiring the employé to make an agreement not to become or remain a member of a labor organization but was convicted for discharging the employee because of his membership in a labor organization. After discussing the case generally, the opinion (Adair v. U. S., 208 U. S. 161, at page 171,) says:

"It thus appears that the criminal offense charged in the count of the indictment upon which the defendant was convicted was, in substance and effect, that being an agent of a railroad company engaged in interstate commerce and subject to the provisions of the above act of June 1, 1898, he discharged one Coppage from its service because of his membership in a labor organization—no other ground for such discharge being alleged."

In the next paragraph of the opinion the court formulated the question as follows:

"May Congress make it a criminal offense against the United States—as by the tenth section of the act of 1898 it does—for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization?"

By the syllabus it also appears that the provision in section ten of the act, making it a crime for an employer to discharge an employee for the reason that the employee is a member of a labor organization, was the only provision of the act which was held unconstitutional.

We think the Adair case did not support the Minnesota decision and has no application to the case at bar.

55 It is a matter of common knowledge, of which legislatures and courts should take cognizance, that many individual laborers are unable to cope on an equal footing with wealthy individual or corporate employers as to the term of employment; also that both employers and employees are in fact separately associated in organizations for the purpose of advancing their respective and, in certain respects, conflicting, interests. It goes without saying that the individual employee cannot coerce his employer from remaining a member of his association and that the individual employer may so coerce his employee unless restrained therefrom by law. If no restraining law is held valid by the courts, we then have this situation: the employers' association prescribes to its members conditions which they, perhaps under penalty, must impose upon their several employees. The individual employee is, in the supposed case, pitted not only against his employer in contracting the conditions of employment but also against the aggregation of associated employers. That such a condition, if real, tends to reduce employees to mere serfdom cannot be questioned. The public cannot be said to be uninterested. The legislature stands in the place of the public as its representative and, if the legislature is not debarred therefrom by constitutional limitations, it devolves upon it to determine whether

any restrictions are necessary and, if so, what the restrictions shall be. The courts should enforce the acts of the legislature unless they are repugnant to the constitution of the nation or state. If experience and changed conditions demonstrate that the constitutional limitations work or permit injustice, there is still a remedy but it is not in the courts.

It is said that an employer has the right to prescribe such conditions of employment as he may choose and the employee may accept or reject them. This, if true, does not dispose of this case. Here the employer required the employee to make a contract pledging his honor not to do an act which he had a legal right to do, which did not necessarily affect his duty to his employer and which the legislature by the act in question, in effect, said it is against public policy and unlawful to coerce an employee to do.

The gravamen of the offense charged in this action is the attempt to coerce, require, demand or influence any person or persons
56 to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association as a condition of said person or persons securing employment or continuing in the employment of the individual, firm or corporation making the demand. The force of the statute is to make it illegal to compel any employee to make a written or oral agreement which presumably he may not wish to make. None of the other statutes except the statute of Minnesota, the validity of which has been adjudicated, is like this.

In Brick Company v. Perry, 69 Kan. 297, 76 Pac. 848, it was held that a statute which makes it unlawful to discharge an employee because he belongs to a labor organization is void for the reason that it invades the right of the employer to terminate a contract. It is held in Railway Co. v. Brown, 80 Kan. 312, 102 Pac. 459, that an employer has a right to discharge at any time for any reason or for no reason, being responsible in damages for violating a contract as to the time of employment. This is the general doctrine, we believe, without dissension. Conversely, it is the right of the employee to quit his employment at any time for any reason or without any reason, being likewise responsible in damages if he violates his contract with the employer.

In State v. Julow, 129 Mo. 163, 29 L. R. A. 257, it is held that "a right to insist that employees shall withdraw from or refrain from joining any trade union or labor union as a condition of employment or continued employment, is within the constitutional rights of an employer" and that a statute making such acts criminal is in violation of the constitution of the United States.

In Gillespie v. People, 188 Ill. 176, 52 L. R. A. 283, it is held that " a statute making it unlawful to prevent or attempt to prevent, an employee from joining any lawful labor organization, or to discharge an employee because of his connection with such an organization, and providing a penalty therefor * * * is void, since the right to terminate a contract, subject to the liability to respond in a civil action for an unwarranted termination, is within the protection

of the provisions of the state and Federal Constitutions, which
57 guarantee that no person shall be deprived of life, liberty or property without due process of law."

This and the Julow case were the pioneer decisions on the question involved, namely the construction of statutes relating to labor organizations. They have been frequently quoted and followed. The statutes are held unconstitutional for the reason that they deprive the employer of the right to contract or to terminate a contract. In a sense, the questions therein decided are the converse of this case. Our statute denounces as crime the requiring or coercing of an employee to make a written or verbal contract, as a condition of employment or continuing employment, that he will not join a labor organization.

The freedom of the employees to contract, or to terminate a contract, is as sacred under the constitutions of the state and nation as is the freedom of the employer to contract or to terminate a contract. Labor organizations are generally recognized as beneficent to both the members thereof and to the public. The members are in the meetings taught to — greater efficiency in their vocations. They are also bound to assist the sick, infirm and unfortunate among the members and in many other respects are not only not inimical to the best interests of society but are helpful and beneficial. The legislature, in passing the act in question, probably also took into consideration a fact of general knowledge that employees, as a rule, are not financially able to be as independent in making contracts for the sale of their labor as are employers in making a contract of purchase thereof.

To many the demands for housing, food and clothing for their families and the education of their children brook no interruption of wages to the bread-winner. Necessity may compel the acceptance of unreasonable and unjust demands. The state is interested in healthful conditions for its wage-earners and in the moral and intellectual development of their children; also that none should become dependent upon the state for support. Employers, so far as they may be considered a class of society, ought to be and usually are interested in all that tends to better the conditions of their employees. To such, as to other good citizens, the condemnation of just criminal laws has no terror but are recognized as shields and safe-
58 guards. The employer and not the employee is the master of the business to be carried on and it follows that he has the right to impose such terms of employment as within reason and justice seem good to him. The employee must accept the conditions or refuse the employment. The employer has no right by virtue of these relations to dominate the life nor to interfere with the liberty of the employee in matters that do not lessen or deteriorate the service. For instance, where the employer may rightfully discharge for drunkenness, he has no inherent right to dictate the church communion of the employee. Our statute implies that labor unions are lawful and not inimical to the rights of employers although no qualifying word or words are used in that connection. If so, liberty of lawful action being an inviolable right, the legislature was within

the exercise of its proper power in denouncing as criminal any attempt to coerce an employee, under the resistless pressure of necessity, to bargain away his liberty.

No right of the employer to contract is taken away or interfered with by the act in question. Practically, the liberty of the employee to contract or to refuse to contract not to join a labor union is of little or no commercial value to him but this is also true of many cherished personal liberties. The employer may discharge an employee for the reason that the employee belongs to a labor union or for the reason that he belongs to a particular church or to any church or for any reason or from mere whim without assigning any reason and the employee is equally free to quit his employment. Yet an employer has no constitutional or inherent right to coerce or compel his employee to make any contract or agreement, written or verbal, which he does not wish to make, whatever may be the condition or purpose.

The state has the right to protect the freedom and independence of employees from any encroachment thereon and make such encroachment a criminal offense whenever in the judgment of the legislature such encroachment constitutes a wrong upon the public generally, as when one makes an assault upon another it is a crime against the state. The judgment is affirmed.

Johnston, C. J., Burch, J., Mason, J., Benson, J., concurring.

59 No. 18088.

PORTER, *J.* (dissenting):

The law obviously was not passed because any person seriously believed its enforcement would result in real benefit to the laboring men or to labor unions. It is like the old soldiers' preference law, and similar enactments, "That keep the word of promise to our ear and break it to our hope." After reading the majority opinion, members of labor unions may rest for a time under the delusion that the legislature, in the exercise of the police power, has reached out its strong arm to shield the laboring man from the attempts of his employer to deprive him of the right to become and continue a member of labor unions, and that construction placed upon the act by the court has made the legislation effective to accomplish the purpose, but a perusal of former decisions of this court, in Brick Co. v. Perry, 69 Kan. 297, 76 Pac. 848, and Railway Co. v. Brown, 80 Kan. 312, 102 Pac. 459, will cause the delusion to disappear. It was held in the brick company case that

"A statute which makes it unlawful to discharge an employee because he belongs to a lawful labor organization and provides for the recovery of damages for such discharge is void. The right to terminate a contract is within the protection of the state and federal constitutions, which guarantee to every citizen the protection of life, liberty and property." (Syl.)

In Railway Co. v. Brown, supra, (1911) this court held that an employer has a right to discharge an employee at any time for any reason or for no reason. These decisions are cited with approval in

the majority opinion without serious attempt to distinguish the principle upon which they were decided from that involved in this case. Nor is there any substantial ground upon which to rest a distinction. If it is not within the power of the legislature to make it a criminal offense for an employer to discharge an employee because the latter belongs to a lawful labor organization it is equally beyond the power of the legislature to make it a criminal offense for him to notify the employee of his intention to discharge him for that reason, and to inform him that he will be retained if he ceases to be a member of such organization. The employer may lawfully discharge him for being a member and inform him of the reason. The employee may, by renouncing his membership in the organization,
60 at once be reemployed by the same person; so that under the former decisions the employer is permitted lawfully to accomplish indirectly the same thing that the present statute declares to be a crime. It was said by the late Justice Harlan, in Adair v. United States, 208 U. S. 161, 172, 52 L. Ed. 436:

"It was the right of the defendant (the employer) to prescribe the terms upon which the services of Coppage (the employee) would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms it offered to him. Mr. Cooley, in his treatise on Torts, p. 278, well says: 'It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress.'"

In the opinion in the Perry case, supra, this court quotes from a decision of the Illinois supreme court in a case involving substantially the same kind of a statute. The Illinois court said:

"The legislature cannot prevent persons, who are sui juris, from laboring, or from making such contracts as they may see fit to make relative to their own lawful labor, nor has it any power by penal laws to prevent any person, with or without cause, from refusing to employ another or to terminate a contract with him, subject only to the liability to respond in a civil action for an unwarranted refusal to do that which has been agreed upon. Hence we are of the opinion that this act contravenes those provisions of the State and Federal constitutions, which guarantee that no person shall be deprived of life, liberty or property without due process of law." Gillespie v. The People, 188 Ill. 176, 185, 80 Am. St. Rep. 176.

The opinion of this court in the Perry case approved the doctrine declared by the supreme court of Missouri in State v. Julow, 129 Mo. 163, 50 Am. St. Rep. 443, which was a criminal proceeding
61 and in which a statute was held to be void because it sought to deprive, without due process of law, the employer of the right to make and terminate contracts. The Missouri statute made it a criminal offense for an employer to enter into any contract or

agreement with any employee for the latter to withdraw from any labor or other lawful organization.

I confess my inability to appreciate the force of the supposed logic by which the statute involved in the present action is held to differ substantially from the Missouri statute. In People v. Marcus, 185 N. Y. 257, 113 Am. St. Rep. 902, a criminal proceeding was based upon a New York statute which reads as follows:

"Any person or persons, employer or employers of labor, and any person or persons of any corporation or corporations on behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employee or employees, laborer or mechanic, to enter into an agreement, either written or verbal from such person, persons, employee, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of such person or persons, employer or employers, corporation or corporations, shall be deemed guilty of a misdemeanor." (People v. Marcus, supra, p. 259.)

The New York Court of Appeals held the statute void because in conflict with the state and federal constitutions. A similar statute enacted in Nevada was declared unconstitutional upon the same grounds. (Goldfield Consol. Mines Co. v. Goldfield M. U. No. 220, 159 Fed. 500.) A Wisconsin statute prohibited an employer from discharging an employee because he was a member of any labor organization. The supreme court of Wisconsin held the statute void as an unwarranted infringement of the constitutional right of liberty in making private contracts. (The State ex rel. Zilmer v. Kreutzberg, 114 Wis. 530, 90 N. W. 1098, 91 Am. St. Rep. 934.) The court in the opinion used this language:

"On this subject Mr. Tiedman (Cont. of Pers. and Prop. p. 332) declares the opinion that a state statute which made it unlawful for an employer to refuse to employ union men, or to compel an
62 employé to withdraw from a trade union on pain of dismissal, would be clearly unconstitutional." (p. 545.)

People v. Marcus, State v. Julow, Gillespie v. The People, and State ex rel Zillmer v. Kreutzberg, supra, are cited with approval by Justice Harlan in Adair v. United States, supra. In the majority opinion comment is made on the fact that the court in the Adair case considered only a section of the act of Congress which made it an offense for a carrier engaged in interstate commerce to discharge an employee simply because of his membership in a labor organization, and that the court declined to consider the precise question involved here. There being no conviction under the section making it an offense to require the employee to agree not to become or remain a member of such organization the court, of course, did not have before it the question as to the validity of that section, and any opinion expressed upon that question would have been outside the issues and obiter. I think it is clear that if it is not within the power of Congress to make it an offense for an employer to discharge the employee for such a reason, it would be equally beyond its power to make it an

offense to notify him of the intention to do so unless he agreed to discontinue such membership.

The mere fact that in the present statute the legislature has seen fit to define such conduct as coercion will not avoid the objection that the law is beyond the scope of the proper exercise of the police power. The state cannot under the mere guise of police regulation, where it is apparent that its real object is not to protect the community or promote the general well-being, deprive an individual of his liberty. (Mugler v. Kansas, 123 U. S. 623, 669, 8 Sup. Ct. 273, 31 L. Ed. 205.) In Brick Co. v. Perry, supra, Justice Greene, speaking for this court, said:

"Before approaching a discussion of the question let us exclude any notion that the act in question is a police regulation. It will be observed that it does not affect the public welfare, health, safety or morals of the community, or prevent the commission of any offense or other manifest evil. Where the object of the act cannot be traced to the accomplishment of some one of these purposes it is not a police regulation. * * *

63 "The right to follow any lawful vocation and to make contracts is as completely within the protection of the constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer but also his associates. He is at liberty to refuse to continue to serve one who has in his employ a person, or an association of persons, objectionable to him. In this respect the rights of the employer and employee are equal. Any act of the legislature that would undertake to impose on an employer the obligation of keeping in his service one whom, for any reason, he should not desire would be a denial of his constitutional right to make and terminate contracts and to acquire and hold property. Equally so would be an act the provisions of which should be intended to require one to remain in the service of one who he should not desire to serve." (pp. 299-300.)

In the case of State v. Julow, supra, the Missouri court said:

"Nor can the statute escape censure by assuming the label of a police regulation. It has none of the elements or attributes which pertain to such a regulation, for it does not in terms or by implication promote, or tend to promote, the public health, welfare, comfort or safety; and if it did, the state would not be allowed under the guise and pretense of police regulation, to encroach or trample upon any of the just rights of the citizen, which the constitution intended to secure against diminution or abridgement. In re Jacobs, 98 N. Y. 98, and cases cited." (p. 177.)

The Minnesota case cited in the majority opinion, (State v. Daniels, — Minn. —) was decided in June, 1912, and the statute there construed is substantially the same statute involved in this case. It reads:

"It shall be unlawful for any person, company, or corporation, or any agent, officer or employé thereof, to coerce, require, or influence any person to enter into any agreement, written or verbal,
64 not to join, become, or remain a member of any lawful labor organization or association, as a condition of securing or retaining employment with such person, firm, or corporation." (R. L. 1905, sec. 5097.)

In the opinion the court accepts the ruling of the United States Supreme Court in the Adair case as declaring it the law of the land "that an employer may dismiss from his service any employé he sees fit for no cause or for any cause assigned or unassigned, arbitrary, capricious or otherwise" and that "discriminating against members belonging to labor organizations by discharging them from employment and retaining those employés only who do not belong or are willing to quit such organizations, cannot be an offense because the constitution of the United States protects the employer in his liberty to so discriminate."

I concur in all that is said in the majority opinion respecting the right of laboring men to form organizations for the purpose of advancing their mutual interests and of protecting their rights as against unjust conditions of employment, which are sometimes imposed by wealthy individual- and more frequently by corporate employers; but I cannot agree that because labor organizations are lawful, therefore the liberty of an employer of labor to insist that no person who remains in his service shall continue to belong to such organizations is subject to the control of the legislature. In the majority opinion it is said that an employer "has no inherent right to dictate the church communion of the employee." On the contrary, I think he has the inherent right to say to an employee that unless the latter becomes a Methodist, a Presbyterian, a Christian Scietnist, or adopts whatever religious faith the employer professes, he will be discharged. And so has the employee the same right to refuse to enter or remain in the service unless the employer shall adopt his religious views. In Nat. Protective Ass'n v. Cumming, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, it has been held within the constitutional rights of employees to exact from an employer as a condition precedent to entering into his employment an
65 agreement that he will not employ nonunion laborers. To the same effect is Jacobs v. Cohen, 183 N. Y. 207, 76 N. E. 5, 111 Am. St. 730. What would be said of an attempt by the legislature to make it a crime for members of labor organizations to coerce an employer into an agreement to discharge all nonunion workmen as a condition precedent to remaining in his service? That would clearly be an unwarranted interference with the liberty of the members of such organizations to fix the terms upon which they would agree to continue to work and would deprive them of a right guaranteed by the constitution of the United States as well as by the state constitution. And yet such a statute would be simply the reverse of the one now under consideration, and would be no more repugnant to the constitutional provisions against depriving persons of liberty of

contract. For the foregoing reasons I dissent from the majority opinion.

West, J., I dissent from the majority opinion.

A true copy.
Attest:

____ ____,
Clerk Supreme Court.

66 In the Supreme Court of the State of Kansas.

STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

I, D. A. Valentine, clerk of the supreme court of the state of Kansas, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of the State of Kansas, appellee vs. T. B. Coppage, appellant, except as to such matters as by stipulation of the parties recited herein are omitted therefrom, and also of the opinion of the court rendered therein, as the same now appear on file and of record in my office.

In testimony whereof, I have hereunto set my Hand and affixed the seal of said court at my office, in Topeka, Kansas, this 1st day of August 1912.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

67 Here follow the original petition for a writ of error, assignments of error Order granting the Petition for the writ of error, the writ of error, the citation with the acknowledgment of service of the same, and a copy of the Bond for appeal and supersedeas:

68 Filed Jul- 19, 1912. D. A. Valentine, Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

18088.

STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

UNITED STATES OF AMERICA,
State of Kansas:

Petition for Writ of Error.

To the Honorable William A. Johnston Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, T. B. Coppage, respectfully shows that on the 6th day of July, 1912, the Supreme Court of the State of Kansas made and entered a final judgment and decision in favor of the appellee, the State of Kansas, and against the appellant, T. B. Coppage, your petitioner, in the above entitled case, pending in said court, wherein the State of Kansas was appellee and your petitioner, T. B. Coppage, was appellant; which said final judgment and decision of the Supreme Court of Kansas affirmed a judgment of conviction and sentence by the trial court, to-wit, the District Court of Bourbon County, Kansas, adjudging said Coppage, your petitioner, guilty of the acts charged in the information filed in this case, under Sections 1 and 2, Chapter 222 of the Laws of Kansas 1903, the same being Sections 4674 and 4675 of the General Statutes of Kansas, 1909, as
69 will particularly appear from the record in this case, and imposing upon your petitioner a fine of Five Hundred Dollars and costs, and ordering that he stand committed to the jail of Bourbon County, Kansas, until the same should be paid; in which said final judgment and decision, and also in the proceedings had prior thereto in this case, certain errors were committed to the prejudice of your petitioner, said T. B. Coppage, who feels himself aggrieved by said final judgment and decision, all of which will more particularly appear from the assignment of errors filed with this petition. That the Supreme Court of the State of Kansas is the highest court of said State of Kansas in which a decision in this court and in this matter could be had, and is the highest court and the court of last resort of said State of Kansas. That in this case and in the Supreme Court of the State of Kansas your petitioner duly drew in question the validity of Sections 1 and 2, Chapter 222, Laws of Kansas 1903, the same being Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being an act of the Legislature of the State of Kansas entitled "An act to provide a penalty for coercing or influencing or making demands upon or requirements of employees, servants, laborers and persons seeking employment." And your

petitioner also duly drew in question the validity of said sections, law and statutes on the ground that the same were repugnant to the Fourteenth Amendment to the Constitution of the United States; that said final decision and judgment of the Supreme Court of the State of Kansas was in favor of the validity of said Sections, Law and Statutes of Kansas; that in this case and in the Supreme Court of the State of Kansas your petitioner claimed that said Sections, Law and Statutes of Kansas and the prosecution herein thereunder deprived your petitioner, T. B. Coppage, of liberty and property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, and denied to said Coppage, as
70 well as to the St. Louis & San Francisco Railroad Company, the equal protection of the laws, and said decision and final judgment of the Supreme Court of the State of Kansas was against your petitioner's said claim and was against rights, privileges and immunities claimed by your petitioner, in and throughout this case and in the Supreme Court of the State of Kansas, under the Fourteenth Amendment to the Constitution of the United States, all of which will particularly appear from the record and proceedings in said case. Your petitioner further represents that said final decision and judgment of the Supreme Court was and is erroneous and contrary to the Fourteenth Amendment to the Constitution of the United States.

Wherefore your petitioner, T. B. Coppage, prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of Kansas, and the Judges thereof, to the end that the record in this case and matter may be removed into the Supreme Court of the United States; and each and all of the errors complained of by your petitioner be examined and corrected, and said judgment reversed and your petitioner discharged; and for citation, stay and supersedeas and for such other process and relief as will enable your petitioner to obtain a review of this case in, and a correction of said errors by, the Supreme Court of the United States, and your petitioner will ever pray.

T. B. COPPAGE, *Petitioner,*
By R. R. VERMILION,
Attorney for said Petitioner.

Allowed at Topeka, Kansas, this July 19, 1912.
W. A. JOHNSTON,
Chief Justice of Supreme Court
of the State of Kansas.

[Endorsed:] 18088. In the Supreme Court of the State of Kansas. State of Kansas, Appellee, vs. T. B. Coppage, Appellant. Petition for Writ of Error. Filed Jul- 19, 1912. D. A. Valentine, Clerk Supreme Court.

71 Filed Jul- 19, 1912. D. A. Valentine, Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

18088.

THE STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Assignment of Errors.

Comes now, T. B. Coppage, the appellant named in the above entitled action, and files herein the following assignment of errors, which he will present to the Supreme Court of the United States and upon which he will rely in his prosecution of the writ of error issued, or to be issued, in this case from the Supreme Court of the United States to the Supreme Court of the State of Kansas, and he avers that the Supreme Court of the State of Kansas, being the highest court of law or equity of the State of Kansas in which a decision could be had in said suit, on the 6th day of July, A. D. 1912, rendered a final judgment in the above entitled action, which was duly entered of record, affirming the judgment of the District Court of Bourbon County, Kansas, finding appellant guilty of the public offense described in the information filed in this case, and adjudging that this appellant pay a fine in the sum of Five Hundred Dollars and pay the costs of the action in said District Court of Bourbon County, Kansas, and that appellant stand committed to the jail of Bourbon County, Kansas until said fine and costs should be paid, all as shown by the record in this case. In the rendition of said judgment by said Supreme Court of the State of Kansas the following divers and manifest errors were committed by said Supreme Court of the State of Kansas to the great damage and prejudice of this appellant, which are apparent on the face of the record, and for the purpose of having the same reviewed, and said final judgment reversed and corrected in and by the Supreme Court of the United States, said appellant, T. B. Coppage, makes the following assignment of errors:

72

1. The Supreme Court of the State of Kansas erred in rendering said final judgment affirming the finding and judgment of the District Court of Bourbon County, Kansas, in and by which this appellant was found guilty of the offense charged in the information and adjudged to pay a fine of Five Hundred Dollars and the costs of prosecution and stand committed to the jail of Bourbon County, Kansas, until such fine and costs were paid.

2. The said Supreme Court of the State of Kansas erred in holding and adjudging that the judgment rendered against this appellant by the District Court of Bourbon County, Kansas finding this appellant guilty of the commission of a public offense and adjudging that he pay a fine of Five Hundred Dollars and the costs of prosecution and stand committed to the jail of Bourbon County, Kansas,

until said fine and costs should be paid, was a valid and legal judgment.

3. The said Supreme Court of the State of Kansas erred in holding and adjudging that the facts stated and charged in the information, on which appellant was prosecuted in the District Court of Bourbon County, Kansas, were sufficient to constitute a public offense under the laws of the State of Kansas.

4. The said Supreme Court of the State of Kansas erred in rendering judgment affirming the judgment of the District Court of Bourbon County, Kansas, and holding that the information on which this appellant was prosecuted in the District Court of Bourbon County, Kansas, charged a public offense to have been committed by this appellant.

5. The said Supreme Court of the State of Kansas erred in holding that the District Court of Bourbon County, Kansas, ruled correctly and did not err in overruling the motion filed by this appellant in said District Court of Bourbon County, Kansas, to
73 set aside and quash the information filed in said court on which this appellant was prosecuted.

6. The said Supreme Court of the State of Kansas erred in holding and adjudging that the said District Court of Bourbon County, Kansas ruled correctly and did not err in overruling and refusing to sustain the motion filed by this appellant in said District Court of Bourbon County, Kansas, in arrest of judgment.

7. That said Supreme Court of the State of Kansas erred in holding and adjudging that the District Court of Bourbon County, Kansas, wherein this appellant was convicted, ruled correctly and did not err in denying and overruling the motion filed by this appellant in said District Court of Bourbon County, Kansas, to grant a new trial and set aside the finding of said court in which this appellant was found guilty of the alleged public offense, charged in the information filed therein, and imposing on this appellant a fine of Five Hundred Dollars and costs and ordering that he stand committed to the jail of Bourbon County, Kansas, until the same be paid.

8. The said Supreme Court of the State of Kansas erred in holding and adjudging said Section- 4674 and 4675 of the General Statutes of Kansas 1909, the same being Section 1 of Chapter 222 of the acts of the Legislature of the State of Kansas 1903, constitutes a valid law and is not in conflict with that portion of the Fourteenth Amendment to the Constitution of the United States which provides; "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the
74 equal protection of the law."

9. The said Supreme Court of the State of Kansas erred in holding and adjudging said Section 4675 of the General Statutes of Kansas of 1909, the same being Section 2 of Chapter 222 of the acts of the Legislature of the State of Kansas 1903, constitutes a valid law and is not in conflict with that portion of the Fourteenth Amendment of the Constitution of the United States which provides; "No

state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

10. The said Supreme Court of the State of Kansas erred in holding and adjudging that the Legislature of the State of Kansas had the lawful and constitutional power and exercised the lawful and constitutional power to enact Sections 4674 and 4675 of the General Statutes of the State of Kansas of 1909, the same being Sections 1 and 2, Chapter 222 of the acts of the Legislature of the State of Kansas of 1903.

11. The said Supreme Court of the State of Kansas erred in holding and adjudging that the Legislature of the State of Kansas could and did lawfully and constitutionally enact Sections 4674 and 4675 of the General Statutes of 1909 of the State of Kansas, the same being Sections 1 and 2, Chapter 222 of the acts of the Legislature of the State of Kansas, 1903, constituting it a public offense, and punishable as therein provided, for this appellant to do and perform the acts which he is charged with having done and performed in the information filed in the District Court of Bourbon County, Kansas, on which this appellant was prosecuted and convicted.

75 12. The said Supreme Court of the State of Kansas erred in holding and adjudging that the enacting by the Legislature of the State of Kansas of Sections 4674 and 4675 of the General Statutes of Kansas 1909, the same being Sections 1 and 2 of Chapter 222 of the acts of the Legislature of the State of Kansas for 1903, wherein it was attempted to render the commission of the acts therein described and prohibited, a public offense, and to punish persons committing such acts, was and is a proper and constitutional exercise of the police power of and by the State of Kansas.

13. Said Supreme Court of the State of Kansas erred in holding that Sections 1 and 2, Chapter 222 of the Laws of Kansas 1903, the same being Sections 4674 and 4675 General Statutes of Kansas 1909, were constitutional and valid and not in violation of Section 1, Article Fourteen of the Amendments to the Constitution of the United States.

14. Said Supreme Court of the State of Kansas erred in holding that there was a valid law of the State of Kansas making the acts charged in the information filed in, and appearing in the record of this case, a public offense.

15. Said Supreme Court of the State of Kansas erred in holding that said Sections 1 and 2, Chapter 222 of the Laws of Kansas 1903, the same being Sections 4674 and 4675 General Statutes of Kansas 1909, and the prosecution in this case thereunder, did not deprive said appellant, T. B. Coppage, of liberty or property without due process of law.

16. Said Supreme Court of the State of Kansas erred in holding that said Sections 1 and 2, Chapter 222 of the Laws of Kansas 1903, the same being Sections 4674 and 4675 General Statutes of Kansas

1909, and the prosecution in this case thereunder, did not
76 deny to said Coppage, or to the St. Louis & San Francisco Railroad Company, the equal protection of the law.

17. Said Supreme Court of the State of Kansas erred in holding that the facts stated in the information filed in and appearing in the record of this case, constituted a public offense.

Wherefore, as well for the foregoing as for other plain errors apparent on the face of the record, this appellant, T. B. Coppage, prays that the said errors, and each of them, be corrected by the Supreme Court of the United States and that said judgment so rendered by the Supreme Court of the State of Kansas, in which it affirmed the judgment and sentence of the District Court of Bourbon County, Kansas, passed upon this appellant, be reversed and set aside and held for naught, and that this appellant be restored to all of his rights the same as if no such judgment had been rendered by the Supreme Court of the State of Kansas and by the District Court of Bourbon County, Kansas, and the same as if no sentence had been imposed upon this appellant, and this appellant prays that he may be discharged from all custody and for costs and such other and further relief as he may be entitled to in the premises.

R. R. VERMILION,
Attorney for Appellant T. B. Coppage.

[Endorsed:] 18088. In the Supreme Court of the State of Kansas. The State of Kansas, Appellee, vs. T. B. Coppage, Appellant. Assignment of Errors.

76½ [Endorsed:] 18088. In the Supreme Court of the State of Kansas. The State of Kansas, Appellee, vs. T. B. Coppage, Appellant. Assignment of Errors. Filed Jul- 19, 1912. D. A. Valentine, Clerk Supreme Court.

77 Filed Jul- 19, 1912. D. A. Valentine, Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

18088.

THE STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Order Granting Petition for Writ of Error.

Now on this 19th day of July, 1912, there are presented, in this case, to the Honorable William A. Johnston, Chief Justice of the Supreme Court of the State of Kansas, at Chambers, a petition filed herein for a writ of error, and an assignment of errors filed herein and accompanying said petition, of and by the appellant, T. B. Coppage, praying for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of

Kansas to review the final judgment and decision of the Supreme Court of the State of Kansas, heretofore rendered and made on July 6, 1912, in the above entitled case; and upon reading said petition for a writ of error and said assignment of errors, and it appearing from said petition, assignment of errors and the record in the case that a proper case for the granting of said petition and for the allowance of said writ of error is duly presented,

It is therefore ordered That the said petition for a writ of error be and it is hereby granted; that said writ of error be and it is hereby allowed, upon said appellant, T. B. Coppage, giving a bond according to law, in the sum of Fifteen Hundred Dollars, with good and sufficient sureties, which said bond, when approved, shall operate
78 as a supersedeas bond and stay of execution and of the mandate to the lower court.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

Attest:

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of the State of Kansas.

[Endorsed:] 18088. In the Supreme Court of the State of Kansas. The State of Kansas, Appellee, vs. T. B. Coppage, Appellant. Order Granting Petition for Writ of Error.

79 Filed Jul- 19, 1912. D. A. Valentine, Clerk Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Kansas before you, being the highest court of law and equity of the said state in which a decision could be had in said suit between the State of Kansas and T. B. Coppage, wherein was drawn in question the validity of a statute of said state of Kansas on the ground that said statute was repugnant to the Constitution of the United States, and more paricularly to the Fourteenth Amendment to the said Constitution of the United States, and the decision was in favor of the validity of said State statute; and wherein was drawn in question the construction of a clause of the Constitution of the United States, and more particularly Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the decision was against the right, privilege and immunity specially set up or claimed by said T. B. Coppage under said clause of the Constitution of the United States; a manifest error hath happened to the great damage of the said T. B. Coppage, as by his complaint appears. We being

willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may
80 have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of July, in the year of our Lord One Thousand Nine Hundred and Twelve.

[The Seal of the District Court of the United States for the District of Kansas. First Division.]

MORTON ALBAUGH,
Clerk of the District Court of the United States for the District of Kansas, First Division.

[Seal of District Court U. S., District of Kansas, 1861.]

Allowed at Topeka, Kansas, on this July 19th, 1912.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

Attest:

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of Supreme Court of the State of Kansas.

[Endorsed:] Writ of Error. Filed July 19, 1912. D. A. Valentine, Clerk of the Supreme Court of the State of Kansas.

81 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of Kansas, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Kansas, wherein T. B. Coppage is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, T. B. Coppage, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Kansas this 19th day of July, 1912.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

Attest:

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

I, —— —— Attorney General of the State of Kansas, and attorney of record for the Defendant in error in the above entitled case, hereby acknowledge due and legal service of the above citation upon me and upon said defendant in error, the State of Kansas, and hereby enter appearance in the Supreme Court of the United States.

Dated at Topeka, Kansas, this July 19, 1912.

JNO. S. DAWSON,
Attorney General of the State of Kansas and Attorney of Record for Defendant in Error, and

S. N. HAWKES,
Ass't Att'y Gen'l.

82 I, the undersigned, Governor of the State of Kansas, do hereby acknowledge due and legal service of the foregoing and attached citation upon me and upon said defendant in error, the State of Kansas, at Topeka, Kansas this 19th day of July, 1912.

W. R. STUBBS,
Governor of the State of Kansas.

83 I, the undersigned, Attorney of Record for the Defendant in error, in the foregoing entitled case, do hereby acknowledge due and legal service of the foregoing and attached citation upon me and upon said defendant in error, the State of Kansas, and hereby enter appearance in the Supreme Court of the United States.

Dated at Ft. Scott, Kansas, this July 20th, 1912.

CHESTER A. RAMSEY,
County Att'y of Bourbon Co., Ks.

[Endorsed:] 18088. State vs. Coppage. Citation. Filed Jul. 24, 1912. D. A. Valentine, Clerk Supreme Court.

84 Filed Jul- 19, 1912. D. A. Valentine, Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

18088.

STATE OF KANSAS, Appellee,
vs.
T. B. COPPAGE, Appellant.

Bond.

Know all men by these presents, That we, T. B. Coppage, as principal, and C. C. Nelson and Stephen Hubbard, as sureties, are held and firmly bound unto said the State of Kansas in the sum of Fifteen Hundred Dollars ($1,500.00), to be paid to said the State of Kansas, to the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 16 day of July, 1912.

Whereas the above named appellant, T. B. Coppage, has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Kansas.

Now therefore the condition of this obligation and bond is such that if the above named appellant, T. B. Coppage, shall prosecute his said writ of error to effect and answer all costs and damages, if he shall fail to make his plea good, then this obligation to be void, otherwise to remain in full force and effect.

T. B. COPPAGE, *Principal.*
STEPHEN HUBBARD,
C. C. NELSON,
Sureties.

85 STATE OF KANSAS,
Bourbon County, ss:

C. C. Nelson and Stephen Hubbard, of lawful age being each first duly sworn on oath depose and say: We are each of lawful age and are citizens of the State of Kansas and know the contents of the foregoing instrument to which we have attached our names. That each for himself says that each of us is worth the sum of Ten Thousand Dollars over and above all debts, liabilities and exemptions.

STEPHEN HUBBARD.
C. C. NELSON.

Subscribed and sworn to before me this 16 day of July, 1912.
[NOTARY'S SEAL.] CARRIE HAPGOOD,
Notary Public in and for Bourbon County, Kansas.

My commission expires August 24, 1915.

The above bond is hereby approved this 19th day of July, 1912.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

Attest:

[SEAL.] D. A. VALENTINE,
Clerk of Supreme Court of the State of Kansas.

86 Supreme Court, State of Kansas.

I, D. A. Valentine, clerk of the said court, do hereby certify that there was lodged with me as such clerk on July 19th, 1912 in the above entitled case,—

The original bond of which a copy is herein set forth.

Two copies of the writ of error, as herein set forth,—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Topeka, Kansas, this 1st day of August, 1912.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

87 UNITED STATES OF AMERICA,
Supreme Court of Kansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of the said supreme court of Kansas, in the city of Topeka, this 1st day of August, 1912.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

Endorsed on cover: File No. 23,330. Kansas Supreme Court. Term No. 328. T. B. Coppage, plaintiff in error, vs. The State of Kansas. Filed August 10th, 1912. File No. 23,330.

Office Supreme Court, U. S.
FILED
JAN 19 1914
JAMES D. MAHER
CLERK

48

NUMBER [redacted]

IN THE

Supreme Court of the United States.

T. B. COPPAGE, PLAINTIFF IN ERROR,

VS.

THE STATE OF KANSAS, DEFENDANT IN ERROR.

ON WRIT OF ERROR TO SUPREME COURT OF THE STATE OF KANSAS.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR.

R. R. VERMILION,
Attorney for Plaintiff in Error.

W. F. EVANS,
Of Counsel.

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NUMBER 328.

IN THE

Supreme Court of the United States.

T. B. COPPAGE, PLAINTIFF IN ERROR,

VS.

THE STATE OF KANSAS, DEFENDANT IN ERROR.

ON WRIT OF ERROR TO SUPREME COURT OF THE STATE OF KANSAS.

STATEMENT OF CASE.

This is a writ of error to the Supreme Court of the State of Kansas, complaining of the action of that court in rendering judgment affirming the judgment and sentence of the District Court of Bourbon County, Kansas, in a criminal action wherein the plaintiff in error was prosecuted for the alleged violation of Sections 4674 and 4675 of the General Statutes of Kansas, 1909, commonly known as the coercion statute. The County Attorney

of Bourbon County filed in the District Court of said County, on the 15th day of July, 1911, an information against the plaintiff in error in this court, defendant in that court, which, omitting the formal parts, is in words as follows:

> "That at and within the County of Bourbon and the State of Kansas on or about the 7th day of July, 1911, one A. R. Hedges, was an employee as switchman in the yards at Fort Scott, Kansas, of the St. Louis & San Francisco Railroad Company, a corporation; that at said time and for many years prior thereto the said A. R. Hedges was a member of a labor organization known as the Switchman's Union of North America, and that on said date the above named T. B. Coppage, defendant, was employed by the said St. Louis & San Francisco Railroad Company and was at said time acting as Superintendent for said Railroad Company and as such agent and officer of said corporation the said T. B. Coppage, at said time, did demand and require of the said A. R. Hedges that he resign from and not remain longer a member of said labor organization; and the said T. B. Coppage, then and there said to the said A. R. Hedges that in case he did not resign from and refuse longer to remain a member of said labor organization that he could not remain an employee in the services of said St. Louis & San Francisco Railroad Company.
>
> That then and there the defendant, T. B. Coppage, presented to the said A. R. Hedges the following writing:

'Fort Scott, Kansas, ..., 1911.

Mr. T. B. Coppage, Superintendent Frisco line, Fort Scott:

We, the undersigned have agreed to abide by your request, that is, to withdraw from the Switchman's Union, while in the service of the Frisco Company.

(Signed)

.....
.....
.....

and demanded as a condition of the said A. R. Hedges remaining in the employ of the said St. Louis & San Francisco Railroad Company that he sign and agree to the same; that at same time the said A. R. Hedges refused to sign said writing, and refused to withdraw from the Switchman's Union of North America, and then and there, the said T. B. Coppage discharged the said A. R. Hedges from the service of said St. Louis & San Francisco Railroad Company, for the reason that the said A. R. Hedges would not withdraw from, and resign as a member of said Switchman's Union of America;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Kansas" (Record 6-7).

The accused having been arrested and required to plead to said information, on the second day of October, 1911, filed his motion to quash and set aside the in-

formation, which, omitting the formal parts, is as follows:

> "1. The information filed in this case does not charge the commission by this defendant of a public offense.
>
> 2. The facts set forth in the information filed herein, against this defendant, do not constitute a public offense under the laws of the State of Kansas.
>
> 3. There is not now, and was not at any of the times named in the information filed herein, any valid law of the State of Kansas making the acts charged in the information a public offense.
>
> 4. The information filed herein is not direct and certain, as regards this defendant, and is so uncertain that this defendant cannot plead thereto" (Record 8).

The motion to quash having been heard by the District Court of Bourbon County, was overruled and exceptions duly taken by the defendant (Record 8-9). The defendant, after the ruling on said motion and on February 12, 1912, waived arraignment and entered his plea of not guilty ~~of~~ to the charge contained in said information, and the case proceeded to trial before the court, a trial by jury, by agreement of parties having been waived (Record, 9-10).

When the State sought to introduce its evidence to support the charges contained in the information, the defendant objected to the introduction of any evidence under the information.

1. Because the facts stated do not constitute a public offense.

2. Because the information filed in this case does not charge the commission by this defendant of a public offense.

3. Because the facts set forth in the information filed herein, against this defendant, do not constitute a public offense under the laws of the State of Kansas.

4. Because there was not at any of the times named in the information any valid law of the State of Kansas making the acts charged therein a public offense.

6. Because the law under which the said information herein against this defendant is brought, and under which the alleged offense herein is charged, to-wit: Sections 4674 and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2, Chapter 222 of the Session Laws of Kansas, 1903, and each and every part thereof, are unconstitutional and void and in violation of Section 1, Article 14 of the Amendment to the Constitution of the United States (Record, 10).

The objection of the defendant to the introduction of any evidence in support of the information, was by the court overruled and the action of the court duly excepted to by defendant (Record, 11). Thereupon the State introduced its evidence and rested.

Thereupon a motion to discharge the defendant and dismiss the case was filed upon substantially the same grounds as the motion to quash the information and the

objection to the introduction of evidence, and for the further reason that the evidence introduced by the state was insufficient to and did not prove the commission by the defendant of a public offense under any law or laws of the State of Kansas (Record 19-20). The motion to discharge the defendant and dismiss the case was overruled, to which action of the court an exception was saved by plaintiff in error, and no evidence being offered by the defendant he was found guilty by the court, as charged in the information, to which finding of the court exception was duly taken by defendant (Record 20).

Motion for a new trial was filed within proper time in which were assigned a number of grounds, principally the same as those set forth in the motion to quash and in the objection to the introduction of evidence and in the motion to discharge the defendant and dismiss the case (Record 21-22). The motion for a new trial was heard on February 12, 1912, and was denied by the court. Exceptions were duly taken by defendant to the ruling of the court. Thereafter and on the same day the defendant filed his motion in arrest of judgment, in which was assigned reasons substantially the same as those set forth in the motion to quash and in the objection to the introduction of evidence and in the motion to discharge the defendant and dismiss the case (Rec. 22-23).

On the same day, to-wit, February 12, 1912, motion in arrest of judgment was overruled and exceptions taken by defendant (Record 23). Thereafter the court

sentenced defendant to pay a fine of five hundred dollars and the costs of the action, and that he stand committed to the jail of Bourbon County, Kansas, until the same should be paid, to which judgment and sentence the defendant at the time duly excepted (Record 26).

Thereafter, notice of appeal was duly given, and appeal to the Supreme Court of the State of Kansas was properly taken (Record 27-28). A proper record was prepared and filed with the Supreme Court, containing among other things an assignment of errors embracing all of the rulings of the court made and excepted to during the trial, as herein stated. Printed briefs were filed and the case was argued orally and on the 6th day of July, 1912, the Supreme Court of Kansas filed its written opinion affirming the judgment of the court below and it rendered judgment accordingly (Record 30-36). Two of the justices dissented from the majority opinion (Record 36-41).

On the 19th day of July, 1912, and within due time, the defendant in the court below, plaintiff in error in this court, presented to the Honorable William A. Johnston, Chief Justice of the Supreme Court of Kansas, his petition for a writ of error, which on said date was allowed (Record 42-43). At the same time an assignment of errors was filed in the Supreme Court of the State of Kansas (Record 44-47). A writ of error was duly issued by the clerk of the District Court of the United States, for the District of Kansas (Record 48-49), citation was duly issued and served (Record 49-

50), bond executed, approved and filed (Record 51-52), and the transcript of the entire record filed in this court, for the purpose of having the judgment of the Supreme Court of Kansas reviewed by this court and reversed. The various steps taken by the defendant in the trial court, as well as in the Supreme Court of Kansas, as shown by the record, were for the purpose of testing the constitutionality of Sections 4674 and 4675 of the General Statutes of the State of Kansas of 1909, for the alleged violation of which the defendant in the court below was prosecuted.

SPECIFICATION OF ERRORS.

1. The Supreme Court of the State of Kansas erred in rendering said final judgment affirming the finding and judgment of the District Court of Bourbon County, Kansas, in and by which this appellant was found guilty of the offense charged in the information and adjudged to pay a fine of five hundred dollars and the costs of prosecution and stand committed to the jail of Bourbon County, Kansas, until such fine and costs were paid.

4. The said Supreme Court of the State of Kansas erred in rendering judgment affirming the judgment of the District Court of Bourbon County, Kansas, and holding that the information on which this appellant was prosecuted in the District Court of Bourbon County, Kansas, charged a public offense to have been committed by this appellant.

5. The said Supreme Court of the State of Kansas erred in holding that the District Court of Bourbon County, Kansas, ruled correctly and did not err in overruling the motion filed by this appellant in said District Court of Bourbon County, Kansas, to set aside and quash the information filed in said court on which this appellant was prosecuted.

6. The said Supreme Court of the State of Kansas erred in holding and adjudging that the said District Court of Bourbon County, Kansas, ruled correctly

and did not err in overruling and refusing to sustain the motion filed by this appellant in said District Court of Bourbon County, Kansas, in arrest of judgment.

7. That said Supreme Court of the State of Kansas erred in holding and adjudging that the District Court of Bourbon County, Kansas, wherein this appellant was convicted, ruled correctly and did not err in denying and overruling the motion filed by this appellant in said District Court of Bourbon County, Kansas, to grant a new trial and set aside the finding of said court in which this appellant was found guilty of the alleged public offense, charged in the information filed therein, and imposing on this appellant a fine of five hundred dollars and costs and ordering that he stand committed to the jail of Bourbon County, Kansas, until the same be paid.

8. The said Supreme Court of the State of Kansas erred in holding and adjudging said Section 4674 of the General Statutes of Kansas 1909, the same being Section 1 of Chapter 222 of the Acts of the Legislature of the State of Kansas 1903, constitutes a valid law and is not in conflict with that portion of the Fourteenth Amendment to the Constitution of the United States which provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

9. The said Supreme Court of the State of Kansas erred in holding and adjudging said Section 4675 of the General Statutes of Kansas of 1909, the same being Section 2 of Chapter 222 of the Acts of the Legislature of the State of Kansas 1903, constitutes a valid law and is not in conflict with that portion of the Fourteenth Amendment of the Constitution of the United States, which provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

11. The said Supreme Court of the State of Kansas erred in holding and adjudging that the Legislature of the State of Kansas could and did lawfully and constitutionally enact Sections 4674 and 4675 of the General Statutes of 1909 of the State of Kansas, the same being Sections 1 and 2, Chapter 222 of the Acts of the Legislature of the State of Kansas, 1903, constituting it a public offense, and punishable as therein provided, for this appellant to do and perform the acts which he is charged with having done and performed in the information filed in the District Court of Bourbon County, Kansas, on which this appellant was prosecuted and convicted.

12. The said Supreme Court of the State of Kansas erred in holding and adjudging that the enacting by the Legislature of the State of Kansas of Sections 4674

and 4675 of the General Statutes of Kansas, 1909, the same being Sections 1 and 2 of Chapter 222 of the Acts of the Legislature of the State of Kansas for 1903, wherein it was attempted to render the commission of the acts therein described and prohibited, a public offense, and to punish persons committing such acts, was and is a proper and constitutional exercise of the police power of and by the State of Kansas.

13. Said Supreme Court of the State of Kansas erred in holding that Sections 1 and 2, Chapter 222 of the Laws of Kansas 1903, the same being Sections 4674 and 4675 General Statutes of Kansas, 1909, were constitutional and valid and not in violation of Section 1, Article Fourteen of the Amendments to the Constitution of the United States.

15. Said Supreme Court of the State of Kansas erred in holding that said Sections 1 and 2, Chapter 222 of the Laws of Kansas 1903, the same being Sections 4674 and 4675 General Statutes of Kansas 1909, and the prosecution in this case thereunder, did not deprive said appellant, T. B. Coppage, of liberty or property without due process of law.

16. Said Supreme Court of the State of Kansas erred in holding that said Sections 1 and 2, Chapter 222 of the Laws of Kansas 1903, the same being Sections 4674 and 4675 General Statutes of Kansas 1909, and the prosecution in this case thereunder, did not deny to said Coppage, or to the St. Louis & San Francisco Railroad Company, the equal protection of the law.

BRIEF AND ARGUMENT.

While each of the several specifications of error herein set forth, challenges the correctness of a particular ruling of the court, they all point to the objection that the facts charged in the information upon which the plaintiff in error was prosecuted, did not constitute a public offense, because the law enacted by the Legislature of the State of Kansas authorizing the prosecution was in contravention of the Fourteenth Amendment to the Constitution of the United States. It will not be necessary therefore to separately discuss each of the specifications of error, but what will be said in this brief and the authorities which will be cited will be directed to the question as to whether or not the law referred to is a valid enactment. If the information did not charge the plaintiff in error with the commission of such acts as constituted a public offense under the law, then the judgment of the Supreme Court of Kansas affirming the judgment of the trial court, is erroneous and should be reversed. The law under which the prosecution involved in this case was instituted and carried on, is embodied in Sections 4674 and 4675 of the General Statutes of Kansas of 1909, the same being Sections 1 and 2 of Chapter 222 of the Session Laws of Kansas, 1903, and is in words, as follows:

> "4674. Coercion. That it shall be unlawful for any individual or member of any firm, or any

agent, officer or employe of any company or corporation, to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment, or continuing in the employment of such individual, firm or corporation (L. 1903, Ch. 222, Sec. 1, March 28).

4675. Misdemeanor. 33. Any individual or member of any firm or any agent, officer, or employe of any company or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars or imprisoned in the county jail not less than thirty days (*Id.*, Sec. 2)."

This law belongs to a class of legislation which has been enacted by the Legislatures of a number of states within the last two decades, the real object of which is to favor certain labor organizations. So far as observed, such laws have been held to be in conflict with the fourteenth amendment to the Constitution of the United States by every court of last resort which has been called upon to pass upon their validity, except by the Supreme Court of the State of Kansas, in the case now under consideration. That court is the only one of last resort, in any state which has held such a law to be valid. Notwithstanding the provisions of the Constitution of the United States that

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

and notwithstanding the decisions of the various courts that a legislative body cannot enact a law which abridges the right of a citizen to sell and purchase labor, yet the notion seems to prevail among some legislators that a way can be found to circumvent the force of the provision of the constitution, above referred to, and to deprive citizens of the full protection thereof. The statute enacted by the Legislature of Kansas of 1903, which is referred to herein, is a product of an effort toward such legislation. The objection to the statute under consideration is two-fold, and we will treat the discussion of it accordingly.

The law deprives the plaintiff in error of life, liberty, or property without due process of law.

The right to freely contract respecting labor has been held so frequently to come within the provision of the fourteenth amendment to the constitution, that it is no longer necessary, in discussing the validity of laws of this character, to comment upon that feature. All of the courts that have been called upon to pass upon the constitutionality of laws of this character, have held or conceded that the general right to make a contract in relation to his business is a part of the liberty of the in-

dividual protected by the fourteenth amendment to the Federal Constitution. This court in *Lochner* v. *New York*, 198 U. S. at page 53, said:

> "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. * * * Under that provision no state can deprive any person of life, liberty or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment."

Later in the case of *Adair* v. *U. S.*, 208 U. S. 175, this court declared:

> "In all such particulars the employer and the employe have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

One of the first Legislatures to engage in this class of law making, was that of the State of Missouri, which prior to 1895 enacted a law, the first section of which is as follows:

> "No employer * * * shall enter into any contract or agreement with any such employe, to withdraw from any trade union, labor union, or other lawful organization of which said employe may be a member, or requiring said employe to refrain from joining any trade union, labor union, or other lawful organization, or requiring any such

> employe to abstain from attending any meeting or assemblage of people called or held for lawful purposes, or shall, by any means, attempt to compel or coerce any employe into withdrawal from any lawful organization or society."

The section of the Missouri law, referred to above, is quite similar to the act of the Legislature of Kansas, the validity of which is challenged in this case. The Missouri statute and the Kansas statute make it unlawful for the persons therein named to enter into any contract or agreement with any employe to withdraw from or not remain a member of a labor organization as a condition of his entering into or continuing in the service of the employer. The Supreme Court of Missouri in the case of *State* v. *Julow*, 129 Missouri 163, 50 Am. St. 443, held the statute referred to unconstitutional and said (*Id.*, p. 443):

> "Here, the law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to-wit, that of terminating a contract, one of the essential attributes of property, indeed property itself, under the preceding definitions. Brought to the bar of a court on such a charge, the accused would have been prejudiced, insofar as the criminality of the act charged is concerned, no question could there be made or admitted as to the quality of the act; that would have been settled by the previous legislative declaration, and it would only remain to find the fact as charged, in order to declare the guilt as charged. But the fact,

as charged as already seen, is not a crime and will not be a crime, so long as constitutional guaranties and constitutional prohibitions are respected and enforced. * * * We deny the power of the Legislature to do this; to brand as an offense that which the constitution designates and declares to be a right, and therefore an innocent act, and, consequently, we hold that the statute which professes to exert such a power is nothing more nor less than a 'legislative judgment,' and an attempt to deprive all who are included within its terms of a constitutional right without due process of law."

In *People* v. *Marcus*, 185 N. Y. 257, 113 Am. St. 902, the court of last resort in the State of New York passed upon the constitutionality of a statute enacted by the Legislature of that state, which provided in part as follows (*Id.*, p. 903):

"Any person or persons, employer or employers of labor, and any person or persons of any corporation or corporations in behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employe or employes, laborer or mechanic, to enter into an agreement, either written or verbal from such person, persons, employe, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of any such person or persons, employer or employers, corporation or corporations, shall be deemed guilty of a misdemeanor."

This statute also is practically the same in terms as the Kansas statute. In the New York case, the information, under which the prosecution was instituted, charged (*Id.*, p. 904) that the defendant "did on behalf of such corporation, and as such employer of labor, coerce and compel one Hyman Scheinbaum to enter into a written agreement on the part of and from him the said Hyman Scheinbaum not to join or become a member of any labor organization as a condition of the said Hyman Scheinbaum securing employment from and continuing in the employment of the said H. Marcus Skirt Co."

It will be observed that the information in the New York case was quite similar to that in the case at bar, except in the New York case, Marcus was charged with having coerced and compelled Scheinbaum to enter into the written contract, whereas the information in the Kansas case shows only an attempt to compel the entering into of such a contract. The Court of Appeals of New York, in holding the statute unconstitutional, among other things said (*Id.*, p. 906):

> "In *National Protective Assn.* v. *Cumming*, 170 N. Y. 315, 88 Am. St. Rep. 648, 63 N. E. 369, 58 L. R. A. 135, it was said that a person may refuse to work for another on any ground that he may regard as sufficient and the employer has no right to demand a reason for it, but even if the reason is that the employe refuses to work with another who is not a member of his organization, it does not affect his right to stop work or to refuse to enter upon an employment. The converse of

this statement must be true, and an employer of labor may refuse to employ a person who is a member of any labor organization, or he may make an employment conditional upon the person employed refraining from joining or becoming a member of a labor organization. It is a well known fact that combinations of employes and also of employers require their members to do or refrain from doing many things which they deem to their individual and combined advantage, while a person not a member of such an organization can act in accordance with the terms of such agreement as he may choose to make. A person employing labor may decide that it is to his advantage to employ only union labor, and be willing to enter into an agreement necessary to procure such labor, or he may decide that it is to his advantage to employ non-union labor, in which case he may also decide that it is to his advantage to make the employment conditional upon an agreement that such employe will not join or become a member of a labor organization."

In 1893 the Legislature of Illinois enacted a law as follows:

"That it shall be unlawful for any individual or member of any firm, or agent, officer, or employe of any company or corporation to prevent, or attempt to prevent, employes from forming, joining and belonging to any lawful labor organization and any such individual, member, agent, officer or employe that coerces or attempts to coerce employes by discharg-

> ing or threatening to discharge from their employ or the employ of any firm, company, or corporation, because of their connection with such lawful labor organization, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars, or be imprisoned for not more than six months, or both, in the discretion of the court."

One C. Gallegos was charged with the violation of that statute. The Supreme Court of Illinois in the case of *Gallegos v. People*, 188 Ill. 176, 80 Am. St. 176, at page 178, in holding the law unconstitutional, said:

> "The terms, life, liberty and property are representative terms, and intended to cover every right to which a member of the body politic is entitled under the law. * * * Indeed, they may embrace all our liberties, personal, civil, and political, including the rights to labor, to contract, to maintain contracts, and to acquire property. None of these liberties and rights can be taken away except by due process of law. * * * The rights of liberty and of property include the right to acquire property by labor and by contract. No one can be deprived of his property without due process of law. He cannot be deprived of any of the essential attributes which belong to the right of property without due process of law. Labor is property. The laborer has the same right to sell his labor and to contract with reference thereto as any other property owner. The right of property involves as one of its essential attributes

> the right not only to contract, but also to terminate contracts. * * * In the case at bar, the contract between plaintiff in error and Gibbons was not for any definite period of time."

In the case of *Goldfield Consolidated Mines Co.* v. *Goldfield Miners' Union No. 220 et al.*, 159 Federal 500, the Circuit Court of the United States for the District of Nevada, construed a law enacted by the legislature of that state in 1903, which was as follows:

> "Section 1. It shall be unlawful for any person, firm or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm or corporation, or any person about to enter the employ of such person, firm or corporation, as a condition for continuing or obtaining such employment, shall promise or agree not to become or continue a member of a labor organization, or shall promise or agree to become or continue a member of a labor organization.
>
> "Sec. 2. Any person or persons, firm or firms, corporation or corporations, violating the provisions of Section 1 of this act shall be deemed guilty of a misdemeanor," etc.

In holding the law to be in conflict with the fourteenth amendment, the court on page 515, said:

> "It is too clear to require a citation of authorities that the Legislature has no power to restrict the exercise of a constitutional right, unless the interests of the public, as distinguished from the interests of

the individual, or of a class of individuals, demand such restraint. The act so forbidden by the Legislature must be detrimental to the public welfare, and the health, safety, or morals of the community to justify such interference. There can be no pretense here, and none is made, that the execution of such a contract as the one in question has any tendency to injure the health, safety, or morals of the public, or of either employer or employees. It is clear that the Nevada statute deprives the employer of the right to contract as to certain matters which may be vital to him, and that it also, while not preventing, does obstruct the exercise of his right to exclude objectionable persons from his employ. The fact that the statute includes an element which is not found in any other similar statute to which attention has been called, in that it prohibits contracts requiring employees to join a union as a condition of employment, in no wise heals its invalidity; the added element simply makes larger and wider the invasion of the liberty of the employer to fix the terms and conditions upon which he will contract for labor."

In the recent case of the *State ex rel. Smith* v. *Daniels*, 136 N. W. 584, the Supreme Court of Minnesota passed upon the validity of a law of that state, which was as follows:

"It shall be unlawful for any person, company or corporation, or any agent, officer or employee thereof, to coerce, require, or influence any person to enter into any agreement, written or verbal, not

to join, become, or remain a member of any lawful labor organization or association, as a condition of securing or retaining employment with such person, firm or corporation."

The terms of the Minnesota law were almost identical with the terms of the Kansas law, and the court held the law invalid, because it was in conflict with the fourteenth amendment, and held that the case was controlled by the decision of this court in the case of *Adair* v. *U. S.*, 208 U. S. 161.

The Supreme Court of the State of Wisconsin in the case of *State* v. *Kruetzberg*, 91 Am. St. Rep. 934, passed upon the validity of a statute prohibiting, under penalty, an employer from discharging an employee because of his membership in a labor organization. The court held the statute invalid under the fourteenth amendment of the Constitution. The reasoning of the court in that case is applicable to the question involved in the case at bar.

The decisions of the Supreme Court of Kansas, prior to the rendition of the decision in this case, were in harmony with the rulings of the courts herein cited. In 1897 the legislature of Kansas enacted Chapter 120 of the Laws of 1897, the same being embodied in Sections 2225, and 2226 of the General Statutes of Kansas, 1901, as follows:

"Section 1. That it shall be unlawful for any person, company, or corporation, or agent, officer, manager, superintendent, master mechanic, or foreman of any person, company, or corporation, to pre-

vent employees from joining and belonging to any labor organization, and any such person, company, or corporation, or any agent, manager, superintendent, master mechanic or other officer of any person, company or corporation that coerces or attempts to coerce employees by discharging or threatening to discharge said employees because of their connection with such labor organization, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than five hundred dollars."

The Supreme Court in the case of *The Coffeyville Vitrified Brick and Tile Company* v. *T. P. Perry*, 69 Kansas 297, held the statute to be invalid and in conflict with the fourteenth amendment to the Constitution. The law passed upon by the court in that case was practically the same as the law involved in this case. A comparison of the language of the two statutes reveals only a slight distinction. The law of 1897 made it a misdemeanor for a person, company or corporation "to prevent employes from joining and belonging to any labor organization," and further provided that any officer of any person, company or corporation "that coerces or attempts to coerce employees by discharging or threatening to discharge said employees because of their connection with such labor organizations, shall be deemed guilty of a misdemeanor." The statute under which the plaintiff in error was prosecuted, and which was held valid by the same court, made it unlawful for any of the parties therein named "to coerce, demand or influence any person

or persons, to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment or continuing in the employment of such individual, firm or corporation." In passing upon the law of 1897, the court in the opinion above referred to said:

> "Before approaching a discussion of the question let us exclude any notion that the act in question is a police regulation. It will be observed that it does not affect the public welfare, health, safety or morals of the community, or prevent the commission of any offense or other manifest evil."

In the later case, which is now before this court, reported in 87 Kansas, 752, the learned justice who wrote the opinion, while he did not expressly declare it to be within the police power of the State to pass such a law, yet said:

> "It goes without saying that the individual employee cannot coerce his employer from remaining a member of his association and that the individual employer may so coerce his employee unless restrained therefrom by law. If no restraining law is held valid by the courts, we then have this situation: the employers' association prescribes to its members conditions which they, perhaps under penalty, must impose upon their several employees; the individual employee is, in the supposed case, pitted not only against his employer in contracting the conditions of employment, but also against the aggregation of

> associated employers. Such a condition, if real, tends to reduce employees to mere serfdom. The public cannot be said to be uninterested. The legislature stands in the place of the public as its representative, and, if the legislature is not debarred therefrom by constitutional limitations, it devolves upon it to determine whether any restrictions are necessary and, if so, what the restrictions shall be."

It is plain to be seen that the court attempted to justify its ruling in this case upon the theory that it was within the police power of the state to prohibit the things therein described, whereas in the case of *Brick Company* v. *Perry, supra,* only a few years before, it had expressly stated that it was not within the police power of the state to prohibit such acts by legislation. The only effort the author of the opinion in the present case makes to distinguish the question involved in this case from that involved in the Brick Company case, is couched in following language:

> "In *Brick Co.* v. *Perry, 69* Kan. 297, 76 Pac. 848, it was held that a statute which makes it unlawful to discharge an employee because he belongs to a labor organization is void for the reason that it invades the right of the employer to terminate a contract. It was held in *Railway Co.* v. *Brown,* 80 Kan. 312, 102 Pac. 459, that an employer has a right to discharge at any time, for any reason or for no reason, being responsible in damages for violating a contract as to the time of employment. This is the general doctrine, we believe, without dissention."

The statute involved in the Brick Company case, not only attempted to make it a misdemeanor for the employers therein named to coerce, or attempt to coerce, employees by discharging, or threatening to discharge them, because of their connection with a labor organization, but it also attempted to make it a misdemeanor for such employers "to prevent employees from joining and belonging to any labor organization."

It will be readily seen therefore, that the very things prohibited by the statute under consideration in the case at bar, are the same as those involved in the law held invalid in the Brick Company case. It would seem if a law, such as was involved in that case, was unconstitutional, the law such as is involved in this case must be held likewise invalid. What difference in principle is there between a law which makes it a misdemeanor to prevent employees from joining and belonging to any labor organization, and to coerce, or attempt to coerce, such employees by discharging, or threatening to discharge them, because of their connection with a labor organization, and a law, like the one involved in this case, which makes it unlawful for an employer to coerce, require, demand or influence any person, or persons, to enter into an agreement, either written or verbal, not to join or become or remain a member of such labor organization, as a condition of his entering or remaining in his employment? The prime object of each of the laws is to prevent an employer from influencing an employee not to join a labor organization or to withdraw from it

if he does not belong to it, as a condition of his being employed, or continuing in employment. Whether an employer for such reason, induces such employee, or attempts to induce him, to abstain from joining, or if a member to withdraw from it, by enttering into a contract, either written or verbal, or whether he influences him by persuasion or demand is of no comsequence. The Supreme Court of Kansas bases its decision upon such difference in order to distinguish this case from the Brick Company case. We submit that the position taken is illogical, and that there is no distinction between the two cases in principal. If one law is in conflict with the fourteenth amendment to the Constitution, the other one is. The opinion of the Kansas Court in this case further said:

> "The gravamen of the offense charged in this action is the attempt to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association as a condition of such person or persons securing employment, or continuing in the employment."

Such acts as the court designates in this case as "the gravamen of the offense" were completely described in the law of 1897, and were involved in the Brick Company case. The learned Justice of the Supreme Court of Kansas who wrote the dissenting opinion, in commenting upon the effort in the majority opinion to distinguish the ques-

tion involved from that involved in the Brick Company case, on page 760, said:

> "The law obviously was not passed because any person seriously believed its enforcement would result in real benefit to the laboring men or to labor unions. It is like the old soldier's preference law, and similar enactments, 'That keep the word of promise to our ear and break it to our hope.' After reading the majority opinion, members of labor unions may rest for a time under the delusion that the Legislature in the exercise of the police power, has reached out its strong arm to shield the laboring man from the attempts of his employer to deprive him of the right to become and continue a member of a labor union, and that the construction placed upon the act by the court has made the legislation effective to accomplish the purpose, but a perusal of former decisions of this court, in *Brick Co.* v. *Perry*, 69 Kan. 297, 76 Pac. 848, and *Railway Co.* v. *Brown*, 80 Kan. 312, 102 Pac. 459, will cause the delusion to disappear. It was held in the brick company case that:
>
> 'A statute which makes it unlawful to discharge an employee because he belongs to a lawful labor organization and provides for the recovery of damages for such discharge is void. The right to terminate a contract is within the protection of the state and federal constitutions, which guarantee to every citizen the protection of life, liberty, and property.'
>
> In *Railway Co.* v. *Brown*, *supra*, (1909) this court held that an employer has a right to discharge

an employee at any time for any reason or for no reason. These decisions are cited with approval in the majority opinion without serious attempt to distinguish the principal upon which they were decided from that involved in this case. Nor is there any substantial ground upon which to rest a distinction. If it is not within the power of the Legislature to make it a criminal offense for an employer to discharge an employe because the latter belongs to a lawful labor organization, it is equally beyond the power of the Legislature to make it a criminal offense for him to notify the employe of his intention to discharge him for that reason and to inform him that he will be retained if he ceases to be a member of such organization."

The dissenting opinion cites the unbroken line of authorities holding such legislation invalid and criticises the "supposed logic" of the majority opinion in an attempt to distinguish those cases from the case at bar. There is no substantial difference in the two laws. Both seek to accomplish the same purpose, and that purpose is to prevent the employers therein named from discharging, or attempting to discharge, an employee because he is a member of a labor organization, and from refusing to employ a party because he is a member of such organization unless he shall retire therefrom. Such a law cannot be enforced without depriving citizens of their right to sell and purchase labor and otherwise contract concerning the same. The Supreme Court of Kansas in the case of *A. T. & S. F. Ry. Co.* v. *Brown*, 80 Kansas, 312, held a law unconstitutional which attempted to

require an employer of labor, upon the request of a discharged employee, to furnish in writing the true cause or reason of such discharge. The reasoning of the court in that case, condemns the law involved in the present case. The decisions of the several courts passing upon the validity of laws similar to that now under consideration, has been cited to show how uniform the views of the courts, both State and Federal, have been upon this question.

It is now desired to call attention to a case decided by this court, passing upon the validity of an Act of Congress making it unlawful for employers, of the description named in the various laws which we have cited, to require their employees to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association or organization, and making it unlawful to threaten any employee with loss of employment because of such membership. We refer to the case of *Adair* v. *United States*, 208 U. S. 161, where after a careful consideration, the law was condemned as being contrary to the Fourteenth Amendment to the Constitution.

This court in that opinion used the following language:

> "The right of a person to sell his labor upon such terms as he deems proper is in its essence the same as the right of the purchaser of labor to prescribe the condition on which he will accept such labor from the person offering to sell it. So the

> right of the employe to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employe. It was the legal right of the defendant Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employe have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

Most of the decisions which have been cited herein, were rendered before the decision in the Adair case; and the courts therefore, did not have the guidance of that case. The reasoning of the several courts, holding laws such as are now before this court unconstitutional, has been the same and is in harmony with the views expressed by this court in the Adair case. In deciding the case of *State ex rel. Smith* v. *Daniels*, 136 N. W. 584, the Supreme Court of Minnesota followed the decision of this court in the Adair case, holding the Minnesota law, which is almost word for word the same as the Kansas law, invalid.

The Kansas law violates the Fourteenth Amendment to the Constitution of the United States in that it denies persons within its jurisdiction the equal protection of the laws.

That class of legislation, to which the law under consideration belongs, has been held by a uniform line of decisions to be in violation of that provision of the fourteenth amendment to the Constitution of the United States which provides "nor deny to any person within its jurisdiction the equal protection of the laws." By the majority opinion of the Supreme Court of Kansas in this case it is sought to sustain the law upon the ground that the party whom the plaintiff in error is charged in the information with having injured was "pitted not only against his employer in contracting the conditions of employment, but also against the aggregation of associated employers." The court found reason for this remark upon something not in the record of the case, which the court considered. There is nothing there to indicate but what the employe, who is alleged to have been injured by his discharge, was perfectly competent to care for himself. The information charges that when the plaintiff in error gave him the alternative of withdrawing from the union or leaving the employment, he chose the latter. Nothing appeared in the record to indicate that he would suffer by loss of employment or that he did not have ample means to support himself and family until he could secure other employment, but the court assumed that the individual did belong to a class

which was not able to cope with their employers, and who, if discharged by the employers, would have no means of support and that if required to withdraw from the union would be reduced to a state of servitude. The court in the majority opinion further said:

> "It is a matter of common knowledge of which legislatures and courts should be cognizant, that many individual laborers are unable to cope on equal footing with wealthy individual or corporate employers as to the terms of employment."

If such be the case, and legislatures and courts are justified in taking notice of it, then it would seem that out of fairness to all members of the laboring class, the act should not only have been framed so as to protect the men who belong to labor unions against the coarse and injustice of their employers, but it should have protected all other classes of labor against such results. The man who does not happen to belong to a labor union, however honest and industrious, and however much in need of the fruits of his labor, is out of sufficient importance to come within the common knowledge. Still the court says the legislature should be possessed of the supposed injustice that is practiced by "wealthy individual or corporate employers." This court in Allen v. U. S. agrees not only held that the law under consideration there was invalid because it deprived Allen of the rights of liberty and property without the process of law, but also said:

> "It may be observed in passing that while that section makes it a crime against the United States to unjustly discriminate against an employe of an interstate carrier because of his being a member of a labor organization, it does not make it a crime to unjustly discriminate against an employe of the carrier because of his not being a member of such an organization."

The claim that the law in question was enacted in the interests of that large class of people who earn a livelihood from their personal labor, and is therefore valid, cannot be sustained, because if it had been so, it would have been made broad enough to include all people who engaged in that line of business. The law singles out a particular class of laboring people, and prohibits acts of employers which affect that class and no other. It is only the individual who belongs to a labor organization, or desires to belong thereto, that is to be protected by it. The legislature cannot select from the inhabitants at large, a certain class, then subdivide that class and enact a law for its benefit, without violating that part of the fourteenth amendment herein referred to. Such legislation has been condemned by a number of the ablest courts in the country, because it denies to persons the equal protection of the law.

The law not only does not operate equally upon all members of the laboring class and is therefore invalid, but it does not put the same restraint upon the employe with reference to quitting his employer, or exacting terms from him, because perchance non-union labor might be

employed, or because of some other act of his employer which the employe might deem detrimental to the members of the organization to which he belongs. In other words, in contracting with a party for his labor, an employer is prohibited from exacting the things named in the statute, but the employe, in contracting with the employer to sell his labor, is free to exact any terms and conditions which he may deem proper not only for his own interests, but for the interests of other members of labor organizations. He may require the employer to enter into a contract not to employ non-union labor, or to discharge laborers, who do not belong to and who will not join a labor union. Such a requirement would be as much against the interests of the class who do not belong to the union, as would the acts of employers in requiring employes, or persons seeking employment, to contract not to join a labor organization or to withdraw from it as a condition of securing or remaining in their employment, would be against the interests of the class who belong to the union, or who desire to belong to the union. If the rule of "common knowledge" is to be applied, then the non-union man is as much entitled to the benefits of it, as the union man.

The law arbitrarily divides that portion of the laboring class who belong to labor unions from the remainder of the class and seeks to benefit that class alone. The law is therefore in conflict with the fourteenth amendment to the Constitution.

In the case of *State* v. *Haun*, 61 Kansas 154, the Supreme Court of Kansas held a law to be unconstitutional, which attempted to make it unlawful for certain employers to pay their employes in scrip, check, draft, etc., or to contract to do so. It held that the law made an arbitrary classification and said:

> "If the classification attempted by this act is a constitutional one, it follows that the Legislature might have made the law applicable only to corporations employing married men or persons over a certain age, or to corporations a proportion of whose employees were women, or applied any other arbitrary or capricious means of distinction. In the language of Mr. Justice Brewer, *infra*, 'in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground,—some difference which bears a just and proper relation to the attempted classification.' A classification of the kind attempted makes a distinction between corporations identically alike in organization, capital and all other powers and privileges conferred by law. It is arbitrary and wanting in reason. The act in question is class legislation of the most pronounced character."

This court in *Cotting* v. *Kansas City Stock Yards Company*, 183 U. S. 112, in holding that a Statute of Kansas created an arbitrary classification, and therefore denied the equal protection of the law, said:

> "There can be no pretense that a stock yard which receives 99 head of cattle per day a year is

not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business that the other. But the receipt of an extra two head of cattle per day does not change the character of the business. If once the door is opened to the affirmance of the proposition that a State may regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guarantee of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would."

In the case of *Gulf, Colorado & Santa Fe Railway* v. *Ellis*, 165 U. S. 151, this court in the syllabus said:

"The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and in all cases it must appear not merely that a classification has been made, but also that it is based upon some

> reasonable ground—something which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection. Tested by these principles the statute in controversy cannot be sustained."

In *Connolly* v. *Union Sewer Pipe Company*, 184 U. S. 558, this court in holding that a statute of Illinois denied the equal protection of the law, said:

> "The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety, but if, by their necessary operation, its regulations looking either to those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void."

In the case of *Gillespie* v. *People*, *supra*, the Supreme Court of Illinois, holding the law under consideration in that case subject to the same constitutional objection, said:

> "The employer, if he discharges a 'union' man from his employment, is liable to be punished as having committed a crime. But he is not subject to punishment if he should discharge from his employment a 'non-union' laboring man. An unwarrantable distinction is thus drawn between workingmen who belong to union labor organizations, and workingmen who do not belong to such organizations. That is to say, the statute does not relate to persons and things as a class, or to all

workingmen, but only to those who belong to a lawful labor organization, that is to say, a labor union 'where a statute does this, where it does not relate to persons or things as a class, but to particular persons or things of a class, it is a special, as distinguished from a general law.' *State* v. *Tolle*, 71 Mo. 645; *State* v. *Herrmann*, 75 Mo. 340. We concur in the following view of this subject expressed by the Supreme Court of Missouri in *State* v. *Julow*, 129 Mo. 163, 50 Am. St. Rep. 443, 41 S. W. 781: 'Here a non-trade union man or non-labor union man could be discharged without ceremony, without let or hindrance, whenever the employer so desired, with or without reason therefor, while in the case of a trade union or labor union man he could not be discharged if such discharge rested on the ground of his being a member of such an organization. In other words, the legislature have undertaken to limit the power of the owner or employer as to his right to contract with, or to terminate a contract with, particular persons of a class, and therefore the statute which does this is a special, and not a general, law, and, therefore, violative of the Constitution."

In the case of *State* v. *Julow*, *supra*, the Supreme Court of Missouri said:

"The legislature may legislate in regard to a class of persons; but they cannot take what may be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes, and enact different rules for the government of each.

> This would be mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair or other individual peculiarities, something not competent for the legislature to do. *State* v. *Herrmann*, 75 Mo. 353."

In *Mines Company* v. *Miners' Union*, 159 Fed 514, the court said:

> "This statute lays no similar restriction upon the employes. Their freedom of contract is unrestrained. There is nothing in the statute which forbids union men from discriminating against non-union men, or non-union men from discriminating against union men. There is nothing which prevents union men from exacting, as a condition upon which they will work, an agreement that every non-union man must be discharged or join the union."

In the case of *State* v. *Kruetzberg*, *supra*, the Supreme Court of Wisconsin said:

> "It has, then, taken from one his liberty and property, not for a public purpose, but for the benefit of other individuals, which is but robbery under the forms of law. *Citizen's etc., Asso.* v. *Topeka*, 20 Wall, 655, 664."

The reasons assigned by the several courts, which have held that laws of this nature are unconstitutional, have been fully and forcibly set forth. It is apparent upon slight consideration what would result should such a right be once recognized by the courts. In this instance

the supposed rights of organized labor are involved. Should it be held that there is no constitutional prohibition against the enacting of a law exclusively for its benefit, then upon the same theory, no constitutional objection could be urged to a law enacted in the interests of any particular organization of individuals. In such case it would be competent for the state legislature to pass a law conferring particular rights upon all individuals who are affiliated with church organizations. It would then further be competent for the legislature, if it happened to be composed of individuals favorable to some particular church denomination, to enact a law conferring a benefit on the individuals who happen to be members of that particular organization. From the reasoning of the courts, it would seem that there cannot be at this time any reasonable contention that a law, like the one under consideration, is permissible under the provisions of the Fourteenth Amendment to the Constitution, which forbids a law, which denies persons the equal protection of the law.

The law cannot be sustained as a proper exercise of the police power of the State.

The Supreme Court of Kansas, in sustaining the law in question, does not expressly state in the opinion that it does so because it considers it a valid exercise of the police power of the State, yet the language used by the court clearly indicates that its decision is based upon that idea. The decision rendered in this case by the Kan-

sas Supreme Court, does not expressly overrule or attempt to overrule the former decision of that court in *Brick Company* v. *Perry*, 69 Kansas, 297, but it attempts the difficult task of distinguishing the two cases. This we contend it has not successfully done. In the Brick Company case it said:

> "Before approaching a discussion of the question let us exclude any notion that the act in question is a police regulation. It will be observed that it does not affect the public welfare, health, safety or morals of the community."

If the part of the opinion just quoted states the law correctly, then that part of the opinion in the present case which says "the public cannot be said to be uninterested," is not correct. The position taken by the court in the Brick Company case is supported by an unbroken line of authorities, while the position taken by the same court in this case finds no support in the reported cases.

In *Lochner* v. *New York*, 198 U. S. 45, at page 57, this court held that a statute of New York, limiting the hours in which work could be performed in a bakery, to ten hours a day, was not a proper exercise of the police power and in the opinion said:

> "Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act."

In *Adair* v. *United States, supra,* this court in discussing the rights of the employer and the employe, under such a law as was then under consideration, held that it could not be sustained as an exercise of the police power and said: "With his reasons neither the public nor third persons had any legal concern."

In *State* v. *Kruetzberg, supra,* the Supreme Court of Wisconsin declined to sustain the law as a valid exercise of the police power.

In *State* v. *Julow, supra,* the Supreme Court of Missouri, in holding that the law could not be sustained as a proper exercise of the police power said:

> "Nor can the statute escape censure by assuming the label of a police regulation. It has none of the elements or attributes which pertain to such a regulation, for it does not, in terms or by implication, promote, or tend to promote, the public health, welfare, comfort, or safety; and, if it did, the state would not be allowed, under the guise and pretense of police regulation, to encroach or trample upon any of the just rights of the citizen, which the constitution intended to secure against diminution or abridgement. *In re Jacobs,* 98 N. Y. 98, 50 Am. Rep. 636, and cases cited."

In *Mines Company* v. *Miners Union, supra,* it is also said:

> "It is too clear to require a citation of authorities that the Legislature has no power to restrict the exercise of a constitutional right, unless the interest of the public, as distinguished from the interests of the individual, or of a class of individuals, demand such restraint. The act so for-

> bidden by the Legislature must be detrimental to the public welfare, and the health, safety, or morals of the community to justify such interference. There can be no pretense here, and none is made, that the execution of such a contract as the one in question has any tendency to injure the health, safety, or morals of the public, or of either employer or employes."

The right of a laboring man to belong to a labor union, is a matter in which the public has no interest, as distinguished from the interest of the individual who belongs to the union, or the union to which he belongs. The relation of such a person to a labor organization does not, in the remotest degree, tend to promote the public health, welfare, comfort or safety. The statute in question, measured by the standard described by the courts, in the several decisions cited, cannot be sustained upon the ground that it is a proper exercise of the police power of the State. No such a law has been sustained by any court, other than that of Kansas, upon such a ground. The law in question deprived the plaintiff in error of liberty and property without due process of law, and it denied to the plaintiff in error the equal protection of the laws, hence we ask this court to hold it invalid and to reverse the decision and judgment of the Supreme Court of Kansas.

Respectfully submitted,

R. R. VERMILION,
Attorney for Plaintiff in Error.

W. F. EVANS,
Of Counsel.

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In the Supreme Court of the United States.

T. B. COPPAGE, *Plaintiff in Error,*

vs. No. 328.

THE STATE OF KANSAS, *Defendant in Error.*

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT OF FACTS.

The Kansas statute under which the plaintiff in error was convicted reads as follows:

"AN ACT to provide a penalty for coercing or influencing or making demands upon or requirements of employees, servants, laborers, and persons seeking employment.

"*Be it Enacted by the Legislature of the State of Kansas:*

"SECTION 1. That it shall be unlawful for any individual or member of any firm, or any agent, officer or employee of any company or corporation, to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment, or continuing in the employment of such individual, firm, or corporation.

"SEC. 2. Any individual or member of any firm or any agent, officer or employee of any company or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars or imprisoned in the county jail not less than thirty days."

Chap. 222, Session Laws of Kansas of 1903.

Secs. 4674 and 4675, Gen. Stat. of Kansas of 1909.

employ of the railway company. The following is the writing presented:

"'Fort Scott, Kansas, ————, 1911.

"'Mr. T. B. Coppage, Superintendent,
'Frisco Lines, Fort Scott.

'We, the Undersigned, have agreed to abide by your request, that is, to withdraw from the Switchmen's Union, while in the service of the Frisco Company.

(Signed) ————————————
————————————
————————————,

"Hedges refused to sign the writing and refused to withdraw from the labor organization. Thereupon appellant, as such superintendent, discharged Hedges from the service of the railway company. Thereafter this criminal action was instituted by information, setting forth, in substance, the above facts. The appellant moved to quash the information on several grounds, the principal ones of which were that the information charged no public offense under the laws of the state of Kansas, and that there was no valid law making the acts charged in the information a public offense. The motion was overruled. The case came regularly on for trial, a jury was waived, and the parties stipulated that the case be tried to the court. Arraignment was waived and a plea of not guilty entered. Thereupon The State offered evidence of the facts above stated, and the appellant submitted the case without evidence. On consideration thereof the court found the appellant guilty as charged. Motions for a new trial and in arrest of judgment were overruled and proper exceptions saved. The only question presented on the appeal is the validity of sections 4674 and 4675 of the General Statutes of 1909, which read:

"'That it shall be unlawful for any individual or member of any firm, or any agent, officer or employee of any company or corporation, to coerce, require, demand or influence any person or persons to enter into

any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment, or continuing in the employment of such individual, firm or corporation.

"'Any individual or member of any firm or any agent, officer or employee of any company or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than fifty dollars or imprisoned in the county jail not less than thirty days.'

"Each party, in argument, assumed that if section 4675, making it a misdemeanor to do any of the things denounced as unlawful in section 4674, is constitutional and valid, then the ruling on the motion to quash the information and the final judgment of the court should be affirmed, otherwise the ruling and judgment of the court should be reversed. Our attention has been called to no other decision upon a statute, except The State, *ex rel.*, v. Daniels (Minn. June, 1912), 136 N. W. 584, like the statute in question. The statute of Minnesota, the validity of which was involved in the decision, is practically the same as ours. The syllabus reads:

"'Under the decision of the supreme court of the United States in Adair v. United States, 208 U. S. 161, which this court must follow and apply, it is held that a criminal complaint based on section 5097, R. L. 1905, which merely alleges that the employer required the employee to enter into a verbal agreement not to remain a member of a labor organization as a condition of retaining his employment, does not state a criminal offense.' (Syl. ¶ 1.)

"The relator was charged and had been convicted of requiring an employee of a railroad company, as a condition of remaining in such employ, to enter into a verbal agreement not to remain a member of a certain labor organization. He was convicted and sentenced to jail in the custody of the sheriff. The district court in a habeas corpus proceeding released him from custody. The case in the supreme court was on the appeal of the sheriff from that judgment.

"It will be observed that the Minnesota decision is based upon the Adair case. In the latter case the accused was not convicted of requiring the employee to make an agreement not to become or remain a member of a labor organization, but was convicted for discharging the employee because of his membership in a labor organization. After discussing the case generally, the opinion (Adair v. United States, 208 U. S. 161) says:

" 'It thus appears that the criminal offense charged in the count of the indictment upon which the defendant was convicted was, in substance and effect, that being an agent of a railroad company engaged in interstate commerce and subject to the provisions of the above act of June 1, 1898, he discharged one Coppage from its service *because of his membership in a labor organization*—no other ground for such discharge being alleged.' (p. 171.)

"In the next paragraph of the opinion the court formulated the question presented as follows:

" 'May congress make it a criminal offense against the United States—as by the tenth section of the act of 1898 it does—for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization?' (p. 171.)

"By the syllabus it also appears that the provision in section 10 of the act, making it a crime for an employer to discharge an employee for the reason that the employee is a member of a labor organization, was the only provision of the act which was held unconstitutional. We think the Adair case does not support the Minnesota decision and has no application to the case at bar.

"It is a matter of common knowledge, of which legislatures and courts should take cognizance, that many individual laborers are unable to cope on an equal footing with wealthy individual or corporate employers as to the terms of employment; also that both employers

and employees are in fact separately associated in organizations for the purpose of advancing their respective and, in certain respects, conflicting interests. It goes without saying that the individual employee can not coerce his employer from remaining a member of his association and that the individual employer may so coerce his employee unless restrained therefrom by law. If no restraining law is held valid by the courts, we then have this situation: the employers' association prescribes to its members conditions which they, perhaps under penalty, must impose upon their several employees; the individual employee is, in the supposed case, pitted not only against his employer in contracting the conditions of employment, but also against the aggregation of associated employers. That such a condition, if real, tends to reduce employees to mere serfdom can not be questioned. The public can not be said to be uninterested. The legislature stands in the place of the public as its representative, and, if the legislature is not debarred therefrom by constitutional limitations, it devolves upon it to determine whether any restrictions are necessary and, if so, what the restrictions shall be. The courts should enforce the acts of the legislature unless they are repugnant to the constitution of the nation or state. If experience and changed conditions demonstrate that the constitutional limitations work or permit injustice, there is still a remedy, but it is not in the courts.

"It is said that an employer has the right to prescribe such conditions of employment as he may choose and the employee may accept or reject them. This, if true, does not dispose of this case. Here the employer required the employee to make a contract pledging his honor not to do an act which he had a legal right to do, which did not necessarily affect his duty to his employer, and which the legislature by the act in question, in effect, said it is against public policy and unlawful to coerce an employee to do.

"The gravamen of the offense charged in this action

is the attempt to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment or continuing in the employment of the individual, firm or corporation making the demand. The force of the statute is to make it illegal to compel any employee to make a written or verbal agreement which presumably he may not wish to make. None of the other statutes except the statute of Minnesota, the validity of which has been adjudicated, is like this.

"In Brick Co. v. Perry, 69 Kan. 297, 76 Pac. 848, it was held that a statute which makes it unlawful to discharge an employee because he belongs to a labor organization is void for the reason that it invades the right of the employer to terminate a contract. It was held in Railway Co. v. Brown, 80 Kan. 312, 102 Pac. 459, that an employer has a right to discharge at any time, for any reason or for no reason, being responsible in damages for violating a contract as to the time of employment. This is the general doctrine, we believe, without dissension. Conversely, it is the right of the employee to quit his employment at any time, for any reason or without any reason, being likewise responsible in damages if he violates his contract with the employer. In State v. Julow, 129 Mo. 163, 31 S. W. 781, 29 L. R. A. 257, it was held that 'a right to insist that employees shall withdraw from or refrain from joining any trade-union or labor union as a condition of employment, or continued employment, is within the constitutional rights of an employer' (29 L. R. A. 257, headnote, ¶ 1), and that a statute making such acts criminal is in violation of the constitution of the United States. In Gillespie v. The People, 188 Ill. 176, 58 N. E. 1007, 52 L. R. A. 283, it was held that 'a statute making it unlawful to prevent or attempt to prevent an employee from joining any lawful labor organization, or to discharge an employee because of his connec-

tion with such an organization, and providing a penalty therefor . . . is void, since the right to terminate a contract, subject to liability to respond in a civil action for an unwarranted termination, is within the protection of the provisions of the state and federal constitutions, which guarantee that no person shall be deprived of life, liberty or property without due process of law.' (52 L. R. A. 283, headnote, ¶ 1.)

"This and the Julow case were the pioneer decisions on the question involved, namely, the construction of statutes relating to labor organizations. They have been frequently quoted and followed. The statutes are held unconstitutional for the reason that they deprive the employer of the right to contract or to terminate a contract. In a sense, the questions therein decided are the converse of this case. Our statute denounces as crime the requiring or coercing of an employee to make a written or verbal contract, as a condition of employment or continuing employment, that he will not join a labor organization.

"The freedom of the employees to contract, or to terminate a contract, is as sacred under the constitutions of the state and nation as is the freedom of the employer to contract or to terminate a contract. Labor organizations are generally recognized as beneficent to both the members thereof and to the public. The members are in the meetings taught to aspire to greater efficiency in their vocations. They are also bound to assist the sick, infirm and unfortunate among the members, and in many other respects are not only not inimical to the best interests of society but are helpful and beneficial. The legislature, in passing the act in question, probably also took into consideration a fact of general knowledge, that employees, as a rule, are not financially able to be as independent in making contracts for the sale of their labor as are employers in making contracts of purchase thereof. To many the demands for housing, food and clothing for their families and the education of their children brook no

interruption of wages to the breadwinner. Necessity may compel the acceptance of unreasonable and unjust demands. The state is interested in healthful conditions for its wage-earners and in the moral and intellectual development of their children; also that none should become dependent upon the state for support. Employers, so far as they may be considered a class of society, ought to be and usually are interested in all that tends to better the conditions of their employees. To such, as to other good citizens, the condemnation of just criminal laws has no terror, but are recognized as shields and safeguards. The employer and not the employee is the master of the business to be carried on, and it follows that he has the right to impose such terms of employment as within reason and justice seem good to him. The employee must accept the conditions or refuse the employment. The employer has no right by virtue of these relations to dominate the life nor to interfere with the liberty of the employee in matters that do not lessen or deteriorate the service. For instance, while the employer may rightfully discharge for drunkenness, he has no inherent right to dictate the church communion of the employee. Our statute implies that labor unions are lawful and not inimical to the rights of employers, although no qualifying word or words are used in that connection. If so, liberty of lawful action being an inviolable right, the legislature was within the exercise of its proper power in denouncing as criminal any attempt to coerce an employee, under the resistless pressure of necessity, to bargain away his liberty.

"No right of the employer to contract is taken away or interfered with by the act in question. Practically, the liberty of the employee to contract or refuse to contract not to join a labor union is of little or no commercial value to him, but this is also true of many cherished personal liberties. The employer may discharge an employee for the reason that the employee belongs to a labor union, or for the reason that he

belongs to a particular church or to no church, or for any reason, or from mere whim without assigning any reason, and the employee is equally free to quit his employment. Yet an employer has no constitutional or inherent right to coerce or compel his employee to make any contract or agreement, written or verbal, which he does not wish to make, whatever may be the condition or purpose.

"The state has the right to protect the freedom and independence of employees from any encroachment thereon and make such encroachment a criminal offense whenever in the judgment of the legislature such encroachment constitutes a wrong upon the public generally, as when one makes an assault upon another it is a crime against the state.

"The judgment is affirmed."

"WEST and PORTER, JJ., dissent."

THE FOURTEENTH AMENDMENT.

The validity of the Kansas statute and the judgments of the Kansas courts are challenged under the fourteenth amendment to the United States constitution, which, so far as applicable, reads:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Instead of the Kansas statute violating this fourteenth amendment, as above quoted, the Kansas law seeks further to guarantee and protect the privileges and immunities of citizens of the United States. For four years switchman Hedges had worked for the Frisco company. For three years Superintendent Coppage was his immediate superior. Presumably their relations were those which ought to prevail between employer and employee until July 6 and 7, 1911, when the plaintiff in error began to meddle with the personal and private affairs of his employee, and to

coerce him into severing his connection with the Switchmen's Union. In harmony with the fourteenth amendment, the state of Kansas had said, in effect, to Mr. Coppage:

"You must not attempt to abridge the privilege of your employee to affiliate himself with a labor union. You, Mr. Coppage, must not meddle with nor deprive him of his liberty—his liberty to affiliate with a labor union. You must not attempt by coercion to deprive him of his property—his financial interest in the insurance provided for his wife and children by that labor union. Mr. Coppage, the state of Kansas will not fold its hands and sit idly by while you thus seek to oppress and coerce your employee and reduce him to a state of peonage. The state of Kansas will not deny, will not withhold from this poor switchman the equal protection of its laws; and, Mr. Coppage, you will meddle with his privileges, his liberty, his property, his rights as a free citizen of Kansas and of the United States at your peril!"

Such is the substance of the Kansas statute. It makes the fourteenth amendment a living force and not an empty platitude.

Indeed the United States Congress has itself legislated in a similar spirit and to protect its poor citizens and those in humble walks of life from this and other forms of oppression and coercion at the hands of such men as Coppage. Section 5508 of the Compiled Statutes of the United States reads as follows:

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States, or because of his having so exercised the same, . . . they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit or trust created by the constitution or laws of the United States."

Section 5510, *id.*, reads:

"Every person who, under color of any law, statute, ordinance, regulation or custom, subjects, or causes to be subjected, an inhabitant of any state or territory,

to the deprivation of any rights, privileges or immunities secured or protected by the constitution and laws of the United States . . . shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or by both."

Mr. Justice Porter, of the Kansas supreme court, in his dissenting opinion (87 Kan. 760) makes a sad confession of the weakness of Kansas and the United States to protect its citizens from the forms of oppression and coercion suggested by the case at bar. Justice Porter said, in part: (87 Kan. 760.)

"The law obviously was not passed because any person seriously believed its enforcement would result in real benefit to the laboring men or to labor unions. It is like the old soldier's preference law, and similar enactments, 'That keep the word of promise to our ear and break it to our hope.' After reading the majority opinion, members of labor unions may rest for a time under the delusion that the legislature, in the exercise of the police power, has reached out its strong arm to shield the laboring man from the attempts of his employer to deprive him of the right to become and continue a member of a labor union, and that the construction placed upon the act by the court has made the legislation effective to accomplish the purpose, but a perusal of former decisions of this court, in Brick Co. v. Perry, 69 Kan. 297, 76 Pac. 848, and Railway Co. v. Brown, 80 Kan. 312, 102 Pac. 459, will cause the delusion to disappear."

The majority opinion of the supreme court admits no such weakness, acknowledges no such infirmity in the law to protect workingmen from the oppressions of their employers. On the contrary, the prosecution and conviction of Coppage is the proof that such laws can be enforced. The Kansas laws legalize, recognize, respect and protect the rights of workingmen by comprehensive enactments. See chapter 63 of the General Statutes of Kansas of 1909. Therein are set out acts fixing eight hours as a day's work for laborers, workingmen and mechanics employed by the state of Kansas or any subdivision or municipality thereof; an act to compel the payment of wages in lawful money; an

act providing for a free employment bureau; an act requiring proprietors of stores to furnish chairs or stools for the seating of woman and girl employees when not actively engaged in their duties; an act to prefer wages of employees in cases of insolvency; an act to prevent blacklisting by employers of labor; an act to provide for the weekly payment of wages of laborers; an act requiring safeguards around dangerous machinery; an act for the protection of workingmen in dangerous buildings; an act requiring an investigation of accidents to workingmen. None of these laws are more salutary than the one under criticism in this case. They are all a part of the humanitarianism of twentieth century legislation.

Counsel for the plaintiff in error cite quite an array of decisions of other states inveighing against legislation not greatly different from that under scrutiny here. But our position is that the Kansas statute is the necessary corollory of all these decisions to keep the law from being so lop-sided in favor of the employer as these various decisions cited by plaintiff in error would make it appear. If the courts with one accord are to hold that the labor organization can not dictate to the employer, if the courts are to hold that the employer must be free to deal with organized labor or refuse to deal with organized labor, then it becomes imperative that the law shall not permit the employer to oppress and coerce the laborer. Let it be noted also that Mr. Coppage was not called upon by this law to deal with the Switchmen's Union of North America. He was only forbidden by this law from oppressing or coercing his employee on account of the employee's relation to that labor organization and forcing his employee to sign a contract not to affiliate with a labor union.

This is a fine opportunity for this court to declare, as the Kansas court has declared, that with as much precision and courage it will uphold the rights of the workingman as it has been constrained to do, time and again, for the employer and those in industrial warfare with the workingman.

If all men are to be equal within the law, as provided for in the fourteenth amendment; if the laboring man is to be the equal of the corporate officer; if the wage earner is to be the equal of his employer; if the poor man is to be the equal of the rich man; if the fourteenth amendment is not to be distorted into a rod of oppression, then the law under which this prosecution was based is in furtherance of that amendment and not in derogation thereof.

In the case of Arthur v. Oakes, 11 C. C. A. 209, 25 L. R. A. 414, the facts so far as material were, that Arthur was a representative of certain employees, in the employment of Oakes, the latter being receiver of the Northern Pacific Railway Company. Oakes as receiver for said company asked for an injunction preventing employees of said company from quitting the company's service. Judge Harlan in his opinion held that as a general rule it is the right of every man to work for whom and when he pleases, and when he is ready to quit the service of his company he may do so. But this right of contract to quit work is not unlimited, but has its recognized exceptions. One of the exceptions to this rule, that the employee may quit the service of his employer when he likes, is, that employees can not combine and conspire to quit the service of an employer, when the object and manifest intention is to injure the business of the employer. Judge Harlan further said in his opinion: "The intent upon the part of a single person to injure the rights of others, or of the public, is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent." Yea, verily, and what is sauce for the goose is likewise sauce for the gander!

The law of Arthur v. Oakes is the law of every state to-day, so it will be seen that this right to dispose of one's labor and capital as one pleases, so much relied upon by the plaintiff in error, is not without its recognized exceptions. It is true that in Arthur v. Oakes it

was the combining and conspiring of two or more persons which made the threatened acts of the employees unlawful, and Judge Harlan said, "That the intent to do a wrongful act on the part of an individual would not be unlawful in that case"; but the present case is different from Arthur v. Oakes, because the statute under which this prosecution was had requires, before the offense is committed under it, *not only the intent* to injure but *the injurious act* in execution of such intention, namely, the *coercing* or *requiring* or *demanding* or *influencing* an employee to enter into an agreement injurious to his civil liberty and to his property and social privileges. Thus the law in the present case only prohibits the intent upon the part of the individual when *coupled with the injurious act* in execution of the unlawful intent, and this was declared in Arthur v. Oakes to be within the cognizance of the law.

Now if the law in Arthur v. Oakes, there applied in favor of the corporation, is to be here applied in favor of the labor organization and its members, then the law under which this conviction was secured is constitutional. The only way to declare the law in the present case invalid is to say that in the eyes of the law the corporation is superior to the labor union, the poor man's organization. And this is not the equality spoken of in the fourteenth amendment.

The problem of industrial warfare, its bitterness, its waste, and the blood and tears that frequently flow from it demand the most serious concern on the part of statesmen, jurists and patriotic citizens. When one thinks of the devastation of the copper country in the labor troubles in Michigan about a year ago, or the more recent industrial warfare in Colorado, it behooves those in authority everywhere never to be dogmatical or servilely bound by precedent in dealing with questions of such gravity. New occasions teach new duties. And we apprehend that before this era of industrial warfare has passed away, laws and law makers and law interpreters will be constrained to radically

change their point of view. The tendency of thoughtful modern opinion is towards compulsory arbitration of labor grievances and industrial strife. If that hopeful dream is to be realized, the unit of the labor organization itself will have to be recognized and dealt with as a legal entity, having the powers, liberties, and privileges—aye, and responsibilities as well, of a legal entity. A decision by this court at this time that it is not unlawful for a railroad employer to oppress his employee by calling him out of bed to come to his employer's office and coercing him into signing a contract, summarily shoved right under his nose, with a threat of dismissal for refusal, obligating the employee by that contract not to affiliate with a labor union, would be disastrous. It would postpone indefinitely the hopes of those who are laboring for the termination of industrial warfare. And once again would arise in the hearts of good citizens over all the republic the great and profound regret that many of them already entertain that ever the fourteenth amendment to the United States constitution was adopted at all. It would recall once again what a curious turn history and law often make. The fourteenth amendment was adopted forty years ago for the plain purpose of protecting the freedmen of the South, in a spirit of the most commendable humanity, to protect the poor negroes of the South from the oppressions and coercions of their former taskmasters and employers. It must be admitted that that amendment has repeatedly fallen short of its high object; but here, in this case, where the position of A. R. Hedges, the humble switchman of the Frisco railway at Fort Scott, is not unlike that of the southern freedmen of forty years ago, we find this very fourteenth amendment, designed to protect switchmen and freedmen and everybody else within the limits of the republic in their situation, invoked to protect and shelter a high-handed and arrogant employer who has invaded the liberty of the very people for whose benefit it was enacted.

Counsel for plaintiff in error, as well as Mr. Justice Porter, who dissented from the majority opinion in the Kansas supreme court, make much of the prior Kansas decision, Coffeyville Vitrified Brick and Tile Co. v. Perry, 69 Kan. 297. The answer to that argument is simple. If the later Kansas decision, which is being here reviewed, is at variance with the earlier Kansas decision, the earlier decision is overruled. It is no longer recognized as Kansas law. But we think it is possible to draw a distinction between the case at bar and the earlier Kansas case.

It is true that the law in the Perry case and the law here under review are somewhat similar, but it is also true that there are enough differences between chapter 120 of the Laws of Kansas of 1897, held unconstitutional in the Perry case, and chapter 222 of the Laws of Kansas of 1903, which is herein questioned, to justify this court in upholding it; that while the law of 1897 was rightly held unconstitutional in the Perry case, the law here under review may be upheld as valid because the two laws are substantially different. Chapter 120 of the Laws of Kansas of 1897, held unconstitutional in the Perry case, is as follows:

"That it shall be unlawful for any person, company, or corporation, or the agent, officer, manager, superintendent, master mechanic, or foreman of any person, company, or corporation, to prevent employees from joining and belonging to any labor organization, and any such person, company or corporation, or any manager, superintendent, master mechanic, or other officer of any person, company, or corporation that coerces or attempts to coerce employees by discharging or threatening to discharge said employees because of their connection with such labor organization, shall be deemed guilty of misdemeanor and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than five hundred dollars.

"That any person, company, or corporation, doing any of the acts prohibited by section one of this act, shall be liable to the person injured, in exemplary or punitive damages not to exceed two thousand dollars, to be recovered by civil action, and in addition thereto

a reasonable attorney fee to be recovered in said civil action for damages."

Chapter 120 of the Laws of 1897 makes it unlawful for a corporation, company, etc., to *prevent employees from joining and belonging to any labor organization.* This is a rather broad prohibition of conduct, and might interfere in many ways with the liberty and property of the employer, which is guaranteed by the fourteenth amendment. Under that law, if the employer *in any way* prevents the employee from belonging to a labor organization he violates the law.

Chapter 222 of the Laws of 1903 does not make it unlawful, either in terms or by implication, for the employer to *prevent employees from joining and belonging to any labor organization, unless* said employer *coerces, requires, demands* or *influences* the employee to enter into an agreement to effect the thing which in both laws is declared unlawful, namely, to *prevent employees from joining and belonging to any labor organization.* In other words, chapter 120 of the Laws of 1897 and chapter 222 of the Laws of 1903 are aimed at the same unlawful act, but chapter 120 of the Laws of 1897 is infinitely broader than chapter 222 of the Laws of 1903 in defining the way in which that unlawful act may be accomplished. This distinction between the two laws is very important, because in considering their validity under the fourteenth amendment much depends upon the breadth and scope of the liberty or property affected by the law.

Chapter 120 of the Laws of 1897, declared unconstitutional in the Perry case, places more restrictions upon the liberty and property of the employer than does chapter 222 of the Laws of 1903, here under review, and therefore the decision of the Perry case can not control the court in the decision of this case.

SIMILAR CASES DISTINGUISHED FROM THE CASE AT BAR.

The law here under review is a comparatively new one, and we believe the following cases are practically the only ones to be found which have any bearing upon this case:

Doremus v. Hennessey, 176 Ill. 608, 68 American State Report, 203.

State v. Julo, 129 Mo. 163, 29 L. R. A. 257.

Gillespie v. People, 188 Ill. 176, 58 L. R. A. 283.

Zelmar v. Krusberg, 114 Wis. 530, 58 L. R. A. 748.

Brick Company v. Perry, 69 Kan. 297.

People v. Marcus, 185 N. Y. 257.

Adair v. United States, 208 U. S. 175.

Mines Company v. Miners' Union, 159 Federal, 514.

Doremus v. Hennessey, though cited against the validity of the law here under review, shows upon investigation that it is entirely foreign to the matters here involved. The Doremus case was merely a difficulty between one employer and certain other employers, and other employees were in no way involved.

In State v. Julo the law was held unconstitutional, and perhaps rightly so. But the law in the Julo case was substantially different from the law here under review. In the Julo case the law made it unlawful for the employer to enter into a contract with the employee not to join a labor organization. This was clearly a restriction upon the constitutional right of contract, both of employer and employee, and unwarranted by law. The law here under review is quite different, in that it says the employer *can not coerce the employee to enter into an agreement.*

In the Gillespie case the law was unconstitutional on the same ground that chapter 120 of the Laws of 1897 of Kansas was held unconstitutional in the Perry case, and these two laws are the same, and perhaps both are, as a matter of fact, unconstitutional, because they both make it unlawful for an employer *to prevent*

an employee from belonging to a labor organization, without specifying what *means* of prevention are unlawful. Thus the law in the Julo case, like the law in the Perry case, goes to a greater extent in depriving the employer of the liberty protected by the fourteenth amendment than does the law here under review, which makes it unlawful to effect the unlawful act by *coercing* or *requiring* or *demanding* or *influencing* the employee *to sign an agreement*, and thus, by the law of Arthur v. Oakes, *manifesting the intent* to injure the labor organization and the employee, and *joining with this intent the injurious act of demanding, requiring, coercing or influencing.*

In the Krusberg case the law was held unconstitutional, but the law in that case made it unlawful to discharge the employee *because he was a member of a labor organization.* The law here under review is quite different from that law, in that it only restricts the employer from *coercing, requiring, demanding* or *influencing* the employee to enter into an agreement, and thereby join the *injurious act with the unlawful intent.*

The case of Brick Company v. Perry is distinguished, *supra.*

In People v. Marcus, 185 N. Y. 257, the law was held unconstitutional, and while that case is nearer the case under review than any of the others, there is this distinction between the two cases: In the Marcus case the law applied only to those *seeking to become employees*, while the law here under review applies both to those already in the employment and those seeking to become employees. It must be remembered, also, that the New York court of appeals, which decided the Marcus case, shocked the conscience of the country by that decision.

In Adair v. United States, 208 U. S. 175, the court says:

"It is not within the power of Congress to make it a criminal offense against the United States, for a carrier engaged in interstate commerce, or an agent

or officer thereof, to discharge an employee simply because he has a membership in a labor organization."

The defendant in error agrees with the proposition of law given in the Adair case. Chapter 120 of the Laws of Kansas, 1897, was declared by the supreme court of Kansas (Perry case, 69 Kan. 297) to be unconstitutional for the very reason given by this court in the quotation from the Adair case above. In the Adair case and in the Perry case it was attempted to make it unlawful for the employer to *prevent* the employee from belonging to a labor organization. The law here under review, as given in the discussion in the Perry case, *supra*, makes it unlawful for an employer to prevent an employee from joining and belonging to a labor organization, by *coercing, requiring, demanding* or *influencing* the employee. In the Adair case and in the Perry case the law does not specify or limit the *means* by which the act must be accomplished to be unlawful. Thus there is no criterion of guilt in the law of the Brick Company case or in the law in the Adair case, and the limits and restrictions in these two cases placed upon the liberty and property of the employer are far greater than those which are placed upon the employer's liberty and property by the law here under review. Since these important differences exist between the Adair case and the Perry case and the law here under review, the Adair case and the Perry case may have been rightly decided, and yet by no means be controlling upon the case at bar, because even a slight difference between two laws may make one constitutional and the other unconstitutional, when we are considering the fourteenth amendment.

In Mines Company v. Miners' Union, 159 Federal, 514, the court held the law, somewhat similar to the law here under review, to be unconstitutional. But the law in that case is nearly identical with the law in State v. Julo, 129 Mo. 163, and differentiated from the law here under review. In the Julo case and the Miners' Union case the law made it unlawful for the

employer to enter into a contract with the employee not to join a labor organization. This was clearly a restriction upon the constitutional right of contract both of employer and employee, and entirely unwarranted by law. The law here under review is quite different, in that it says the employer can not *coerce* the employee to enter into an agreement.

There is no decision any place in the books which is direct authority for or against the constitutionality of the law here under review, because there is no law in the books which is not substantially different from the law assailed here; and when we deal with the fourteenth amendment we must remember that even a slight difference between two laws may make the one invalid and the other valid according to that amendment. And so we must decide the validity or invalidity of this law, not upon the decisions, but rather upon the constitution of the United States.

There is another phase of this matter which should not be overlooked. The contract which Coppage sought to coerce switchman Hedges into signing is in the nature of a restraint of trade, and we are inclined to think that that contract would in and of itself have been a violation of the antitrust laws of both the state of Kansas and the United States.

We call the court's attention to the fact that this statute simply prohibits the compelling of a person to enter into an agreement, which agreement itself would be against public policy and practically an agreement in restraint of trade, while the old statute sought to prohibit an employer from discharging an employee. The supreme court of the state of Kansas properly and clearly decided that an employer had the right to terminate the relationship of employer and employee with or without a reason therefor; but in the present case the legislature is not seeking to prohibit an employer from discharging his employee, *but is seeking to prohibit the employer from compelling the employee to enter into an agreement not to become or remain a member of a labor*

organization. If the employer and employee voluntarily made an agreement whereby the employee bound himself forever not to join any labor or trade organization of any nature, we submit that such an agreement would be against public policy and would be void, and would be such an agreement that the state, in the protection of the public, would be entitled to prohibit it. If the state is entitled to prohibit the voluntary entering into an agreement which is against public policy, the state can clearly prohibit one person from compelling another person to enter into such unlawful agreement, and we think that is the situation in the present case. It is well known that labor organizations are formed for many very worthy and entirely justifiable purposes, and among them are the purposes of materially and properly benefiting a very large share of the citizens of the state, and for the purpose of securing a more harmonious and equitable adjustment of the relations between employers and employees, and to bring about peace and order in the adjustment of controversies, and to improve and develop manufactures and trades; and we believe that any agreement that seeks or tends to prevent individuals from joining such an organization is an agreement in restraint of trade, and is as much a subject of legislation as is any other unlawful combination, and that the present law has practically the same purpose, or a very similar purpose, and very similar result as the Sherman antitrust law and the Kansas statutes prohibiting unlawful agreements and combinations in restraint of trade. This court, and the supreme court of the state of Kansas, and the courts of other states, uniformly have held the Sherman antitrust law, and similar statutes passed by state legislatures, valid and in harmony with the constitution; and we earnestly insist that the present Kansas law, which prohibits the requirement by one person that another shall make such unlawful agreement, is a valid statute.

We hope that this court will have no difficulty in sustaining the decision of the court below. It does

not violate the fourteenth amendment, but is an honest effort on the part of the state, not alone to acquiesce in the fourteenth amendment, but to contribute something on is own account to see that the fourteenth amendment is made a positive force for good as it was originally intended. It is in direct furtherance of the humanitarian purposes of the fourteenth amendment. It is in harmony with the twentieth century spirit of jurisprudence. It is in harmony with the enlightened sentiment of twentieth century courts, as so well declared by Mr. Justice Burch in Caspar v. Lewin, 82 Kan. 604, wherein he said:

"Steam and electricity have revolutionized manufacturing industries so marvelously that no vestige of former conditions remains. But while the factory workers' environment has completely changed, the common-law rights and remedies have remained unchanged. It has been well understood for a long time that there is no juristic or economic excuse for this state of affairs. The liberty of capital to conduct its own business in its own way does not include the right to inflict the cruelties which have invariably characterized the industrial progress and liberty of the wage earner. The right to contract for extra pay for extra hazard, and to seek some other employment if he does not like his master's methods, is a myth, or, as has been said, a heartless mockery."

We respectfully submit that the judgment should be affirmed.

John S. Dawson

Attorney-general of the State of Kansas.

J. L. Shepherd

Of Counsel.

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No. 48

IN THE

Supreme Court of the United States.

T. B. COPPAGE, PLAINTIFF IN ERROR,

VS.

THE STATE OF KANSAS, DEFENDANT IN ERROR.

ON WRIT OF ERROR TO SUPREME COURT OF THE STATE OF KANSAS.

REPLY BRIEF OF PLAINTIFF IN ERROR.

R. R. VERMILION,
Attorney for Plaintiff in Error.

W. F. EVANS,
Of Counsel.

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The brief filed on behalf of the defendant in error contains some statements which we think require a brief reply.

The record shows that the defendant in the court below relied upon the invalidity of the law under which he was prosecuted and, therefore, introduced no evidence. It does not appear what reasons existed for the act of the accused in requesting A. R. Hedges to either withdraw from the Switchmen's Union or from the

service of the railway company. No doubt good and sufficient reasons existed.

It is argued that the discharged switchman was a man of a family, that he had insurance in the Switchmen's Union, and that he was notified at an inopportune time that the railway superintendent desired to have an interview with him. The inference from this argument on the part of the State is, that these circumstances have a bearing upon the constitutionality of the law in question. The validity of the law does not depend upon the circumstances surrounding the individual whom it is sought to protect. If the law is unconstitutional as applied to an employe without a family, without life insurance, and without being notified of the desired interview after he had retired for the night, then it is also unconstitutional as to the complaining switchman in this case, under the circumstances stated in the State's brief.

Counsel for the State, while not expressly claiming that the law is a proper exercise of the police power of the State, and therefore valid, nevertheless enumerate certain laws which it is claimed have been enacted by the legislatures of Kansas, from time to time, in the exercise of such power. Whether or not these laws come within the authority possessed by the State, in the exercise of its police power, we are not called upon to determine, for the simple reason that the plaintiff in error, in this court, was not convicted of the violation of either of said laws, and it will be time enough to discuss their validity when they have been drawn in question.

We do not understand that counsel for the State seriously dispute the correctness of our contention that the decisions of the several courts which have been cited in the principal brief of the plaintiff in error, support the claim of plaintiff in error that the law is unconstitutional. In certain instances they have attempted to differentiate the principles announced in those cases from those involved in this case, but the real contention in the State's brief is that conditions now are different from what they were when those decisions were rendered; that a new era has dawned; that a new light has been shed upon human affairs; that the Federal Constitution is no longer a barrier to class legislation; that, therefore, this court should place a different construction upon the fourteenth amendment as applied to this law, from that placed upon it in the Adair case, and by the several state courts in the cases cited, and that this case should be considered by the court from a standpoint of policy rather than in the light of its previous decisions.

It is claimed on the part of the State, that as the decisions cited in our principal brief so uniformly declared laws of the character of the one involved in this case unconstitutional, it was necessary for the legislature of the State of Kansas to enact the law in question in order, as counsel expresses it, "to keep the law from being so lopsided in favor of the employer, as these various decisions cited by the plaintiff in error would make it appear." No doubt the Kansas legislature desired to

put upon the statute book a law for the especial benefit of the labor organizations and their members. It desired to do this regardless of the effect which the law might have upon the persons and institutions that furnished the wage-earner an opportunity for employment. Neither the decision of the Supreme Court of Kansas in Brick Company vs. Perry, nor of this court in the Adair case deterred the legislature from another attempt to deprive employers of labor of the right to determine whom they will and whom they will not employ.

The State's brief, among other things, asserts, "The only way to declare the law in the present case invalid, is to say that in the eyes of the law the corporation is superior to the labor union, the poor man's organization, and this is not the equality spoken of in the fourteenth amendment." We can scarcely persuade ourselves that counsel for the State intend such a reflection upon the intelligence as well as on the integrity of the courts which rendered the several decisions holding such law unconstitutional, as their remarks would seem to imply. A rational consideration of the reasons given by this court in the Adair case, and by the various state courts that have rendered the decisions which we have cited in our principal brief, will convince the unprejudiced mind that there is a way to declare the law (in the present case) invalid, without saying that "The corporation is superior to the labor union, the poor man's organization."

There was never a time when the efficiency of the fourteenth amendment to the Constitution, and in fact the Constitution itself needed to be exemplified more than the present. If people and corporations who own and control property are not to be protected in the use of it and in the liberty to contract with reference thereto, against enactments such as is in question in this case, the wage-earner will be a greater sufferer than his employer, from such a policy.

Allusion has been made in the brief of the State, to the copper strike in Michigan and the coal strike in Colorado, and from those incidents counsel assert that "It behooves those in authority everywhere, never to be dogmatical or servilely bound by precedent in dealing with questions of such gravity." The methods of the labor unions employed in those two industrial difficulties furnish ample justification for the feeling among a large number of employers of labor, that more satisfactory relations can be secured by the employment of non-union men.

It is contended by counsel for the State that the law declared unconstitutional in *Brick Co.* v. *Perry*, 69 Kan. 297, is different from the law under consideration in this case. It is claimed that the decision of the Supreme Court of Kansas in the Brick Co. case can be reconciled with the decision of the same court in the case at bar. In that case the Supreme Court said

> "Before approaching a discussion of the question, let us exclude any notion that the act in question is a police regulation."

The court then entered upon a discussion of the validity of the law and held clearly that it could not be upheld under the power of police regulation possessed by the State; on the contrary, it held that the law deprived the Brick Company of its property without due process of law and that it was, therefore, in violation of the fourteenth amendment to the Constitution.

If the court decided any question in the case of *Brick Co.* v. *Perry*, it was that the law was in violation of the fourteenth amendment to the federal constitution and that it could not be upheld as a proper exercise of the police power of the State. If the Supreme Court of Kansas, in the case at bar, decided anything, it was that the law was valid because it was a proper exercise of the police power of the State. The justice who wrote the opinion, discussed at length how the public is interested in the welfare of labor unions and of the members thereof, and how the State is interested in healthful conditions for these wage earners and in the moral and intellectual development of their children, and that they should not be put in a position which would make them dependent upon the State for support.

Frankness on the part of the State would dictate that it admit that the two decisions rendered by the Supreme Court of Kansas cannot be reconciled, and place its claim for an affirmance of the later decision, upon the broad ground taken in its brief, that the constitution should not be enforced and the rights of the plaintiff in error thereunder protected, lest the conscience of a cer-

tain class of individuals whom the State in its brief is pleased to call "the country," should be shocked

In a further effort to reconcile the ruling of the Supreme Court of the State of Kansas in *Brick Co.* v. *Perry* with that in the case at bar, the claim is made that the law of 1897, which was declared unconstitutional in the Brick Co. case, is different from the law here in question. It is argued that the law of 1897 was much broader than the law of 1903, and that the Supreme Court of Kansas must have found provisions in the law of 1897 which contravened the fourteenth amendment to the federal constitution and which are not present in the law now under discussion. Counsel overlook the principle that the greater always includes the less. The essential part of the law of 1897 is as follows:

> "That it shall be unlawful for any person, company, corporation, etc. * * * to prevent employees from joining and belonging to any labor organization."

The intent of the legislature in that part of the law just quoted is plain, speaks for itself and needs no explanation. The same law then goes on further to provide as follows:

> "and any such person, company, corporation * * * that coerces or attempts to coerce employees by discharging or threatening to discharge said employees because of their connection with such labor organization, shall be deemed guilty of a misdemeanor."

It is clear that the purpose of the law, was the same as the purpose of the law of 1903, under which the prosecution in this case was instituted. The court said that that law was unconstitutional because the class of persons and corporations therein described had a right, under the fourteenth amendment to the constitution to prevent employees from joining or belonging to labor organizations, by refusing employment to such as belonged or by discharging such as would not withdraw even though such act resulted in coercing or attempting to coerce employees not to join, or to sever their connections if they had joined, by discharging or threatening to discharge them from the service.

The essential part of the law we are now considering is as follows:

> "That it shall be unlawful for any individual * * * or employee of any company or corporation, to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become a member of any labor organization or association as a condition of such person or persons securing employment or continuing in employment."

The object of the legislature, in this law, is clearly to prevent individuals and corporations therein named from refusing to employ laborers because they belong to labor organizations or discharging them for the same reason.

The argument is that the law of 1897 was so broad in its terms that it was made unlawful for the

persons and corporations therein named to prevent employees from joining or belonging to labor organizations, by any means whatsoever, and that it might be lawful for the class of persons and corporations therein mentioned to prevent employees from joining or belonging to labor organizations by *some* methods. It is not pointed out, however, in what particulars or under what circumstances it would be lawful for the class of persons and corporations mentioned in that law to prevent employees from joining or belonging to such organizations.

The Supreme Court of Kansas, in the decision in *Brick Co.* v. *Perry*, did not point out any such circumstances and did not condemn the law on the ground that it was so broad that it might include methods which would be proper. The acts attempted to be prohibited by the law of 1897 are precisely those attempted to be prohibited by the law of 1903. The fact that the law of 1903 prohibits the persons and corporations therein named from coercing, requiring, demanding and influencing the persons therein named from entering into any agreement not to join or become or remain a member of any labor organization, introduces no new element or feature by which the meaning can be distinguished from the law of 1897.

The language of the statute enacted in 1903 is in many particulars identical with the Act of Congress, declared unconstitutional by this court in *Adair* v. *United States*, 208 U. S. 161. The law considered in the Adair case made it unlawful for persons and corporations therein named to require any employee seeking employ-

ment, as a condition of such employment, to enter into an agreement, either written of verbal, not to become a member of any labor union, association or organization, and also rendered it unlawful for any such person to threaten any employee with loss of employment by reason of his membership in any labor organization. If this court was justified in condemning the act of Congress involved in the Adair case because it deprived the parties therein named of their right to liberty and property without due process of law, then it must be held that the law involved in this case likewise deprives the parties therein named of their liberty and property without due process of law and is, therefore, in violation of the fourteenth amendment to the federal constitution.

Counsel for the State claim support in the position that the law now involved is valid, in the decision in *Arthur* v. *Oakes*, 11 C. C. A. 209. It is difficult to see how anything said in that case can apply to the case at bar. The court there discussed a law relating to conspiracies by two or more persons, to injure another. The only question decided by the court was, that two or more employees could not lawfully combine to quit the service of their employer for the purpose of injuring his business. There is nothing in the language of that decision from which it can be inferred that a State Legislature possesses the power to enact a law making it a misdemeanor for an employer to discharge an employee or to refuse to employ a laborer because of his affiliations with the labor union, or for any other reason.

The State, in its brief, has not met the argument and authorities presented in the brief of the plaintiff in error, filed in this case. The authorities presented in the principal brief, uniformly hold the law involved, to be unconstitutional. No decisions have been cited to the contrary. We ask that the judgment of the Supreme Court of Kansas be reversed.

Respectfully submitted,

R. R. VERMILION,
Attorney for Plaintiff in Error.

W. F. EVANS,
Of Counsel.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1914.

COPPAGE *v.* STATE OF KANSAS.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 48. Submitted October 30, 1914.—Decided January 25, 1915.

The Kansas statute declaring it a misdemeanor punishable by fine or imprisonment for an employer to require an employé to agree not to become or remain a member of any labor organization during the time of the employment, so far as it applies to such a case as the present, where an employé at will, a man of full age and understanding, was merely required to freely choose whether he would give up his position of employment or would agree to refrain from association with the union while so employed, the case being free from any element of coercion or undue influence; *held*, repugnant to the "due process" clause of the Fourteenth Amendment.

Adair v. *United States*, 208 U. S. 161, followed to the effect that it is the constitutional right of an employer to dispense with the services of an employé because of his membership in a labor union, just as it is the constitutional right of an employé to quit the service of an employer who employs non-union men.

Under constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment where there is no stipulation on the subject he has the right to provide against by insisting that a stipulation respecting it shall be a *sine qua non* of the inception of the employment, or of its continuance if terminable at will.

Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property, chief among which is that of personal employment by which labor and other services are exchanged for money or other forms of property.

A State cannot, by designating as "coercion" conduct which is not such in truth, render criminal any normal and essentially innocent exercise of personal liberty; for to permit this would deprive the Fourteenth Amendment of its effective force in this respect.

When a party appeals to this court for the protection of rights secured to him by the Federal Constitution, the decision is not to depend upon the form of the state law, nor even upon its declared purpose, but rather upon its operation and effect as applied and enforced by the State; and upon these matters this court cannot in the proper performance of its duty yield its judgment to that of the state court.

A statutory provision which is not a legitimate police regulation cannot be made such by being placed in the same act with a police regulation, or by being enacted under a title that declares a purpose which would be a proper object for the exercise of that power.

It being self-evident that, unless all things are held in common, some persons must have more property than others, it is from the nature of things impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights.

The Fourteenth Amendment recognizes "liberty" and "property" as co-existent human rights and debars the States from any unwarranted interference with either.

Since a State may not strike down the rights of liberty or property directly, it may not do so indirectly, as by declaring in effect that the public good requires the removal of those inequalities that are but the normal and inevitable result of the exercise of those rights, and then invoking the police power in order to remove the inequalities, without other object in view.

The Fourteenth Amendment debars the States from striking down personal liberty or property rights or materially restricting their normal exercise, excepting so far as may be incidentally necessary for the accomplishment of some other and paramount object and one that concerns the public welfare. The mere restriction of liberty or of property rights cannot of itself be denominated "public welfare" and treated as a legitimate object of the police power; for such restriction is the very thing that is inhibited by the Amendment.

Without intimating anything inconsistent with the right of individuals to join labor unions, or questioning the legitimacy of such organizations so long as they conform to the laws of the land as others are required to do, *held*, that the individual has no inherent right to join a labor union and still remain in the employ of one who is unwilling to employ a union man any more than the same individual has a right to join the union without the consent of that organization.

There may not be one rule of liberty for the labor organization or its members and a different and more restrictive rule for employers.

The employé's liberty of making contracts does not include a liberty to procure employment from an unwilling employer or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is accorded to the employé.

To ask a man to agree in advance to refrain from affiliation with the union while retaining a certain position of employment is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other; and, having accepted employment on those terms, the employé is still free to join the union when the period of employment expires, or, if employed at will, then at any time upon simply quitting the employment; and if bound by his own agreement to refrain from joining during a stated period of employment he is in no different situation from that which is necessarily incident to term contracts in general.

Constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability.

Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which if fulfilled prevents for the time any inconsistent course of conduct.

87 Kansas, 752, reversed.

THE facts, which involve the constitutionality under the due process clause of the Fourteenth Amendment of the statute of Kansas of 1909, making it unlawful for employers to coerce, require or influence employés not to join or remain members of labor organizations, are stated in the opinion.

Mr. R. R. Vermilion and *Mr. W. F. Evans* for plaintiff in error:

The statute amounts to deprivation of liberty and property without due process of law, and also to a denial of due process of law.

The statute is not a proper exercise of the police power.

In support of these contentions see, *Adair* v. *United States*, 208 U. S. 161; *A., T. & S. F. Ry.* v. *Brown*, 80 Kansas, 312; *Coffeyville Brick Co.* v. *Perry*, 69 Kansas, 297; *Gillespie* v. *People*, 188 Illinois, 176; *Goldfield Mines Co.* v. *Goldfield Miners' Union*, 159 Fed. Rep. 514; *Lochner* v. *New York*, 198 U. S. 45; *People* v. *Marcus*, 185 N. Y. 257; *State* v. *Coppage*, 87 Kansas, 752; *State* v. *Daniels*, 136 N. W. Rep. 584; *State* v. *Julow*, 129 Missouri, 163; *State* v. *Kreutzberg*, 114 Wisconsin, 530; *Cotting* v. *Kansas City Stock Yards*, 183 U. S. 112; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 558; *G., C. & S. F. Ry.* v. *Ellis*, 165 U. S. 151; *State* v. *Haun*, 61 Kansas, 154.

Mr. John S. Dawson, Attorney General of the State of Kansas, and *Mr. J. I. Sheppard* for defendant in error:

The Kansas statute does not violate the Fourteenth Amendment but seeks further to guarantee and protect the privileges and immunities of citizens of the United States. In harmony with the Fourteenth Amendment, the State of Kansas has said, in effect, that employers must not attempt to abridge the privilege of their employés to affiliate themselves with labor unions or meddle with or deprive them of their liberty to affiliate with such unions. They must not attempt by coercion to deprive them of their property—their financial interest in the insurance provided for their wives and children by such labor union. The State of Kansas will not fold its hands and sit idly by while employers seek to oppress and coerce their employés and reduce them to a state of peonage. Nor will the State withhold from a poor switchman equal protection

of its laws. See §§ 5508–10, Rev. Stat., prohibiting conspiracies to oppress any citizen of the United States.

If all men are to be equal within the law, as provided for in the Fourteenth Amendment; if the laboring man is to be the equal of the corporate officer; if the wage earner is to be the equal of his employer; if the poor man is to be the equal of the rich man; if that amendment is not to be distorted into a rod of oppression, then the law under which this prosecution was based is in furtherance of that amendment and not in derogation thereof.

In *Arthur* v. *Oakes*, 11 C. C. A. 209, 24 L. R. A. 414, Judge Harlan in his opinion held that as a general rule it is the right of every man to work for whom and when he pleases, and when he is ready to quit the service of his company he may do so. But this right of contract to quit work is not unlimited, but has its recognized exceptions. One of the exceptions to this rule, that the employé may quit the service of his employer when he likes, is, that employés cannot combine and conspire to quit the service of an employer, when the object and manifest intention is to injure the business of the employer.

The law of *Arthur* v. *Oakes* is the law of every State today, so it will be seen that this right to dispose of one's labor and capital as one pleases, relied upon by the plaintiff in error, is not without its recognized exceptions.

If the law in *Arthur* v. *Oakes*, there applied in favor of the corporation, is to be here applied in favor of the labor organization and its members, then the Kansas statute is constitutional. The only way to declare the law in the present case invalid is to say that in the eyes of the law the corporation is superior to the labor union, the poor man's organization. This is not the equality spoken of in the Fourteenth Amendment. *Coffeyville Brick Co.* v. *Perry*, 69 Kansas, 297, is no longer recognized as Kansas law and it can be distinguished.

There are differences between chapter 120 of the Laws

of Kansas of 1897, held unconstitutional in the *Perry Case*, and chapter 222 of the Laws of Kansas of 1903, which is herein questioned, to justify this court in upholding it; while the law of 1897 was rightly held unconstitutional in the *Perry Case*, the law here under review may be upheld as valid because the two laws are substantially different.

Similar cases, such as *Doremus* v. *Hennessey*, 176 Illinois, 608; *State* v. *Julow*, 129 Missouri, 163; *Gillespie* v. *People*, 188 Illinois, 176; *Zillmer* v. *Kreutzberg*, 114 Wisconsin, 530; *People* v. *Marcus*, 185 N. Y. 257; *Adair* v. *United States*, 208 U. S. 175; *Mines Company* v. *Miners' Union*, 159 Fed. Rep. 514, can be distinguished.

MR. JUSTICE PITNEY delivered the opinion of the court.

In a local court in one of the counties of Kansas, plaintiff in error was found guilty and adjudged to pay a fine, with imprisonment as the alternative, upon an information charging him with a violation of an act of the legislature of that State, approved March 13, 1903, being Chap. 222 of the session laws of that year, found also as §§ 4674 and 4675, Gen. Stat. Kansas 1909. The act reads as follows:

"AN ACT to provide a penalty for coercing or influencing or making demands upon or requirements of employés, servants, laborers, and persons seeking employment.

"*Be it Enacted, etc.:*

"SECTION 1. That it shall be unlawful for any individual or member of any firm, or any agent, officer or employé of any company or corporation, to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment, or continuing in the employment of such individual, firm, or corporation.

"SEC. 2. Any individual or member of any firm or any

agent, officer or employé of any company or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars or imprisoned in the county jail not less than thirty days."

The judgment was affirmed by the Supreme Court of the State, two justices dissenting (87 Kansas, 752), and the case is brought here upon the ground that the statute, as construed and applied in this case, is in conflict with that provision of the Fourteenth Amendment of the Constitution of the United States which declares that no State shall deprive any person of liberty or property without due process of law.

The facts, as recited in the opinion of the Supreme Court, are as follows: About July 1, 1911, one Hedges was employed as a switchman by the St. Louis & San Francisco Railway Company, and was a member of a labor organization called the Switchmen's Union of North America. Plaintiff in error was employed by the railway company as superintendent, and as such he requested Hedges to sign an agreement, which he presented to him in writing, at the same time informing him that if he did not sign it he could not remain in the employ of the company. The following is a copy of the paper thus presented:

Fort Scott, Kansas, ——— —, 1911.

Mr. T. B. Coppage, Superintendent Frisco Lines, Fort Scott:

We, the undersigned, have agreed to abide by your request, that is, to withdraw from the Switchmen's Union, while in the service of the Frisco Company.

(Signed) _____

Hedges refused to sign this, and refused to withdraw from the labor organization. Thereupon plaintiff in error, as such superintendent, discharged him from the service of the company.

At the outset, a few words should be said respecting the construction of the act. It uses the term "coerce," and some stress is laid upon this in the opinion of the Kansas Supreme Court. But, on this record, we have nothing to do with any question of actual or implied coercion or duress, such as might overcome the will of the employé by means unlawful without the act. In the case before us, the state court treated the term "coerce" as applying to the mere insistence by the employer, or its agent, upon its right to prescribe terms upon which alone it would consent to a continuance of the relationship of employer and employé. In this sense we must understand the statute to have been construed by the court, for in this sense it was enforced in the present case; there being no finding, nor any evidence to support a finding, that plaintiff in error was guilty in any other sense. The entire evidence is included in the bill of exceptions returned with the writ of error, and we have examined it to the extent necessary in order to determine the Federal right that is asserted (*Southern Pacific Co.* v. *Schuyler*, 227 U. S. 601, 611, and cases cited). There is neither finding nor evidence that the contract of employment was other than a general or indefinite hiring, such as is presumed to be terminable at the will of either party. The evidence shows that it would have been to the advantage of Hedges, from a pecuniary point of view and otherwise, to have been permitted to retain his membership in the union, and at the same time to remain in the employ of the railway company. In particular, it shows (although no reference is made to this in the opinion of the court) that as a member of the union he was entitled to benefits in the nature of insurance to the amount of fifteen hundred dollars, which he would have been obliged to forego if he had ceased to be a member. But, aside from this matter of pecuniary interest, there is nothing to show that Hedges was subjected to the least pressure or influence, or that he was not

a free agent, in all respects competent, and at liberty to choose what was best from the standpoint of his own interests. Of course, if plaintiff in error, acting as the representative of the railway company, was otherwise within his legal rights in insisting that Hedges should elect whether to remain in the employ of the company or to retain his membership in the union, that insistence is not rendered unlawful by the fact that the choice involved a pecuniary sacrifice to Hedges. *Silliman* v. *United States*, 101 U. S. 465, 470, 471; *Hackley* v. *Headley*, 45 Michigan, 569, 576; *Emery* v. *Lowell*, 127 Massachusetts, 138, 141; *Custin* v. *City of Viroqua*, 67 Wisconsin, 314, 320. And if the right that plaintiff in error exercised is founded upon a constitutional basis it cannot be impaired by merely applying to its exercise the term "coercion." We have to deal, therefore, with a statute that, as construed and applied, makes it a criminal offense punishable with fine or imprisonment for an employer or his agent to merely prescribe, as a condition upon which one may secure certain employment or remain in such employment (the employment being terminable at will), that the employé shall enter into an agreement not to become or remain a member of any labor organization while so employed; the employé being subject to no incapacity or disability, but on the contrary free to exercise a voluntary choice.

In *Adair* v. *United States*, 208 U. S. 161, this court had to deal with a question not distinguishable in principle from the one now presented. Congress, in § 10 of an act of June 1, 1898, entitled "An Act concerning carriers engaged in interstate commerce and their employés" (c. 370, 30 Stat. 424, 428), had enacted "That any employer subject to the provisions of this Act and any officer, agent, or receiver of such employer who shall require any employé, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member

of any labor corporation, association, or organization; or shall threaten any employé with loss of employment, or shall unjustly discriminate against any employé because of his membership in such a labor corporation, association, or organization . . . is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof . . . shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars." Adair was convicted upon an indictment charging that he, as agent of a common carrier subject to the provisions of the Act, unjustly discriminated against a certain employé by discharging him from the employ of the carrier because of his membership in a labor organization. The court held that portion of the Act upon which the conviction rested to be an invasion of the personal liberty as well as of the right of property guaranteed by the Fifth Amendment, which declares that no person shall be deprived of liberty or property without due process of law. Speaking by Mr. Justice Harlan, the court said (208 U. S., p. 174): "While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law, is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least in the absence of contract between the parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employé to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such

employé. It was the legal right of the defendant Adair—however unwise such a course might have been—to discharge Coppage [the employé in that case] because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employé have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

Unless it is to be overruled, this decision is controlling upon the present controversy; for if Congress is prevented from arbitrary interference with the liberty of contract because of the "due process" provision of the Fifth Amendment, it is too clear for argument that the States are prevented from the like interference by virtue of the corresponding clause of the Fourteenth Amendment; and hence if it be unconstitutional for Congress to deprive an employer of liberty or property for threatening an employé with loss of employment or discriminating against him because of his membership in a labor organization, it is unconstitutional for a State to similarly punish an employer for requiring his employé, as a condition of securing or retaining employment, to agree not to become or remain a member of such an organization while so employed.

It is true that, while the statute that was dealt with in the *Adair Case* contained a clause substantially identical with the Kansas act now under consideration—a clause making it a misdemeanor for an employer to require an employé or applicant for employment, as a condition of such employment, to agree not to become or remain a member of a labor organization,—the conviction was

based upon another clause, which related to discharging an employé because of his membership in such an organization; and the decision, naturally, was confined to the case actually presented for decision. In the present case, the Kansas Supreme Court sought to distinguish the *Adair* decision upon this ground. The distinction, if any there be, has not previously been recognized as substantial, so far as we have been able to find. The opinion in the *Adair Case*, while carefully restricting the decision to the precise matter involved, cited (208 U. S. on page 175), as the first in order of a number of decisions supporting the conclusion of the court, a case (*People* v. *Marcus*, 185 N. Y. 257), in which the statute denounced as unconstitutional was in substance the counterpart of the one with which we are now dealing.

But, irrespective of whether it has received judicial recognition, is there any real distinction? The constitutional right of the employer to discharge an employé because of his membership in a labor union being granted, can the employer be compelled to resort to this extreme measure? May he not offer to the employé an option, such as was offered in the instant case, to remain in the employment if he will retire from the union; to sever the former relationship only if he prefers the latter? Granted the equal freedom of both parties to the contract of employment, has not each party the right to stipulate upon what terms only he will consent to the inception, or to the continuance, of that relationship? And may he not insist upon an express agreement, instead of leaving the terms of the employment to be implied? Can the legislature in effect require either party at the beginning to act covertly; concealing essential terms of the employment—terms to which, perhaps, the other would not willingly consent—and revealing them only when it is proposed to insist upon them as a ground for terminating the relationship? Supposing an employer is unwilling to have in his

employ one holding membership in a labor union, and has reason to suppose that the man may prefer membership in the union to the given employment without it—we ask, can the legislature oblige the employer in such case to refrain from dealing frankly at the outset? And is not the employer entitled to insist upon equal frankness in return? Approaching the matter from a somewhat different standpoint, is the employé's right to be free to join a labor union any more sacred, or more securely founded upon the Constitution, than his right to work for whom he will, or to be idle if he will? And does not the ordinary contract of employment include an insistence by the employer that the employé shall agree, as a condition of the employment, that he will not be idle and will not work for whom he pleases but will serve his present employer, and him only, so long as the relation between them shall continue? Can the right of making contracts be enjoyed at all, except by parties coming together in an agreement that requires each party to forego, during the time and for the purpose covered by the agreement, any inconsistent exercise of his constitutional rights?

These queries answer themselves. The answers, as we think, lead to a single conclusion: Under constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment, where there is no stipulation on the subject, he has the right to provide against by insisting that a stipulation respecting it shall be a *sine qua non* of the inception of the employment, or of its continuance if it be terminable at will. It follows that this case cannot be distinguished from *Adair* v. *United States*.

The decision in that case was reached as the result of elaborate argument and full consideration. The opinion states (208 U. S. 171): "This question is admittedly one of importance, and has been examined with care and deliberation. And the court has reached a conclusion

which, in its judgment, is consistent with both the words and spirit of the Constitution and is sustained as well by sound reason." We are now asked, in effect, to overrule it; and in view of the importance of the issue we have re-examined the question from the standpoint of both reason and authority. As a result, we are constrained to re-affirm the doctrine there applied. Neither the doctrine nor this application of it is novel; we will endeavor to re-state some of the grounds upon which it rests. The principle is fundamental and vital. Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money.

An interference with this liberty so serious as that now under consideration, and so disturbing of equality of right, must be deemed to be arbitrary, unless it be supportable as a reasonable exercise of the police power of the State. But, notwithstanding the strong general presumption in favor of the validity of state laws, we do not think the statute in question, as construed and applied in this case, can be sustained as a legitimate exercise of that power. To avoid possible misunderstanding, we should here emphasize, what has been said before, that so far as its title or enacting clause expresses a purpose to deal with coercion, compulsion, duress, or other undue influence, we have no present concern with it, because nothing of that sort is involved in this case. As has

been many times stated, this court deals not with moot cases or abstract questions, but with the concrete case before it. (*California* v. *San Pablo &c. Railroad*, 149 U. S. 308, 314; *Richardson* v. *McChesney*, 218 U. S. 487, 492; *Missouri, Kan. & Texas Ry.* v. *Cade*, 233 U. S. 642, 648.) We do not mean to say, therefore, that a State may not properly exert its police power to prevent coercion on the part of employers towards employés, or *vice versa*. But, in this case, the Kansas court of last resort has held that Coppage, the plaintiff in error, is a criminal punishable with fine or imprisonment under this statute simply and merely because, while acting as the representative of the Railroad Company and dealing with Hedges, an employé at will and a man of full age and understanding, subject to no restraint or disability, Coppage insisted that Hedges should freely choose whether he would leave the employ of the Company or would agree to refrain from association with the union while so employed. This construction is, for all purposes of our jurisdiction, conclusive evidence that the State of Kansas intends by this legislation to punish conduct such as that of Coppage, although entirely devoid of any element of coercion, compulsion, duress, or undue influence, just as certainly as it intends to punish coercion and the like. But, when a party appeals to this court for the protection of rights secured to him by the Federal Constitution, the decision is not to depend upon the form of the state law, nor even upon its declared purpose, but rather upon its operation and effect as applied and enforced by the State; and upon these matters this court cannot, in the proper performance of its duty, yield its judgment to that of the state court. *St. Louis S. W. Ry.* v. *Arkansas*, 235 U. S. 350, 362, and cases cited. Now, it seems to us clear that a statutory provision which is not a legitimate police regulation cannot be made such by being placed in the same act with a police regulation, or by being enacted under a title that declares a

purpose which would be a proper object for the exercise of that power. "Its true character cannot be changed by its collocation," as Mr. Justice Grier said in the *Passenger Cases*, 7 How. 283, 458. It is equally clear, we think, that to punish an employer or his agent for simply proposing certain terms of employment, under circumstances devoid of coercion, duress, or undue influence, has no reasonable relation to a declared purpose of repressing coercion, duress, and undue influence. Nor can a State, by designating as "coercion" conduct which is not such in truth, render criminal any normal and essentially innocent exercise of personal liberty or of property rights; for to permit this would deprive the Fourteenth Amendment of its effective force in this regard. We of course do not intend to attribute to the legislature or the courts of Kansas any improper purpose or any want of candor; but only to emphasize the distinction between the form of the statute and its effect as applied to the present case.

Laying aside, therefore, as immaterial for present purposes, so much of the statute as indicates a purpose to repress coercive practices, what possible relation has the residue of the Act to the public health, safety, morals or general welfare? None is suggested, and we are unable to conceive of any. The Act, as the construction given to it by the state court shows, is intended to deprive employers of a part of their liberty of contract, to the corresponding advantage of the employed and the upbuilding of the labor organizations. But no attempt is made, or could reasonably be made, to sustain the purpose to strengthen these voluntary organizations, any more than other voluntary associations of persons, as a legitimate object for the exercise of the police power. They are not public institutions, charged by law with public or governmental duties, such as would render the maintenance of their membership a matter of direct concern to the general

welfare. If they were, a different question would be presented.

As to the interest of the employed, it is said by the Kansas Supreme Court (87 Kansas, p. 759) to be a matter of common knowledge that "employés, as a rule, are not financially able to be as independent in making contracts for the sale of their labor as are employers in making contracts of purchase thereof." No doubt, wherever the right of private property exists, there must and will be inequalities of fortune; and thus it naturally happens that parties negotiating about a contract are not equally unhampered by circumstances. This applies to all contracts, and not merely to that between employer and employé. Indeed a little reflection will show that wherever the right of private property and the right of free contract co-exist, each party when contracting is inevitably more or less influenced by the question whether he has much property, or little, or none; for the contract is made to the very end that each may gain something that he needs or desires more urgently than that which he proposes to give in exchange. And, since it is self-evident that, unless all things are held in common, some persons must have more property than others, it is from the nature of things impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights. But the Fourteenth Amendment, in declaring that a State shall not "deprive any person of life, liberty or property without due process of law," gives to each of these an equal sanction; it recognizes "liberty" and "property" as co-existent human rights, and debars the States from any unwarranted interference with either.

And since a State may not strike them down directly it is clear that it may not do so indirectly, as by declaring in effect that the public good requires the removal of those

inequalities that are but the normal and inevitable result of their exercise, and then invoking the police power in order to remove the inequalities, without other object in view. The police power is broad, and not easily defined, but it cannot be given the wide scope that is here asserted for it, without in effect nullifying the constitutional guaranty.

We need not refer to the numerous and familiar cases in which this court has held that the power may properly be exercised for preserving the public health, safety, morals, or general welfare, and that such police regulations may reasonably limit the enjoyment of personal liberty, including the right of making contracts. They are reviewed in *Holden* v. *Hardy*, 169 U. S. 366, 391; *Chicago, B. & Quincy R. R.* v. *McGuire*, 219 U. S. 549, 566; *Erie R. R.* v. *Williams*, 233 U. S. 685; and other recent decisions. An evident and controlling distinction is this: that in those cases it has been held permissible for the States to adopt regulations fairly deemed necessary to secure some object directly affecting the public welfare, even though the enjoyment of private rights of liberty and property be thereby incidentally hampered; while in that portion of the Kansas statute which is now under consideration—that is to say, aside from coercion, etc.—there is no object or purpose, expressed or implied, that is claimed to have reference to health, safety, morals, or public welfare, beyond the supposed desirability of leveling inequalities of fortune by depriving one who has property of some part of what is characterized as his "financial independence." In short, an interference with the normal exercise of personal liberty and property rights is the primary object of the statute, and not an incident to the advancement of the general welfare. But, in our opinion, the Fourteenth Amendment debars the States from striking down personal liberty or property rights, or materially restricting their normal exercise, excepting

so far as may be incidentally necessary for the accomplishment of some other and paramount object, and one that concerns the public welfare. The mere restriction of liberty or of property rights cannot of itself be denominated "public welfare," and treated as a legitimate object of the police power; for such restriction is the very thing that is inhibited by the Amendment.

It is said in the opinion of the state court that membership in a labor organization does not necessarily affect a man's duty to his employer; that the employer has no right, by virtue of the relation, "to dominate the life nor to interfere with the liberty of the employé in matters that do not lessen or deteriorate the service"; and that "the statute implies that labor unions are lawful and not inimical to the rights of employers." The same view is presented in the brief of counsel for the State, where it is said that membership in a labor organization is the "personal and private affair" of the employé. To this line of argument it is sufficient to say that it cannot be judicially declared that membership in such an organization has no relation to a member's duty to his employer; and therefore, if freedom of contract is to be preserved, the employer must be left at liberty to decide for himself whether such membership by his employé is consistent with the satisfactory performance of the duties of the employment.

Of course we do not intend to say, nor to intimate, anything inconsistent with the right of individuals to join labor unions, nor do we question the legitimacy of such organizations so long as they conform to the laws of the land as others are required to do. Conceding the full right of the individual to join the union, he has no inherent right to do this and still remain in the employ of one who is unwilling to employ a union man, any more than the same individual has a right to join the union without the consent of that organization. Can it be doubted that a

labor organization—a voluntary association of working men—has the inherent and constitutional right to deny membership to any man who will not agree that during such membership he will not accept or retain employment in company with non-union men? Or that a union man has the constitutional right to decline proffered employment unless the employer will agree not to employ any non-union man? (In all cases we refer, of course, to agreements made voluntarily, and without coercion or duress as between the parties. And we have no reference to questions of monopoly, or interference with the rights of third parties or the general public. These involve other considerations, respecting which we intend to intimate no opinion. See *Curran* v. *Galen*, 152 N. Y. 33; 46 N. E. Rep. 297; *Jacobs* v. *Cohen*, 183 N. Y. 207, 213, 214; 76 N. E. Rep. 5; *Plant* v. *Woods*, 176 Massachusetts, 492; 57 N. E. Rep. 1011; *Berry* v. *Donovan*, 188 Massachusetts, 353; 74 N. E. Rep. 603; 3 A. & E. Ann. Cas. 738; *Brennan* v. *United Hatters*, 73 N. J. Law, 729, 738; 65 Atl. Rep. 165, 169; 9 A. & E. Ann. Cas. 698, 702.) And can there be one rule of liberty for the labor organization and its members, and a different and more restrictive rule for employers? We think not; and since the relation of employer and employé is a voluntary relation, as clearly as is that between the members of a labor organization, the employer has the same inherent right to prescribe the terms upon which he will consent to the relationship, and to have them fairly understood and expressed in advance.

When a man is called upon to agree not to become or remain a member of the union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the

employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employé.

To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment, is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other; for "It takes two to make a bargain." Having accepted employment on those terms, the man is still free to join the union when the period of employment expires; or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct.

So much for the reason of the matter; let us turn again to the adjudicated cases.

The decision in the *Adair Case* is in accord with the almost unbroken current of authorities in the state courts. In many States enactments not distinguishable in principle from the one now in question have been passed, but, except in two instances (one, the decision of an inferior court in Ohio, since repudiated; the other, the decision now under review), we are unable to find that they have been judicially enforced. It is not too much to say that such laws have by common consent been treated as unconstitutional, for while many state courts of last resort have adjudged them void, we have found no decision by such a court

sustaining legislation of this character, excepting that which is now under review. The single previous instance in which any court has upheld such a statute is *Davis* v. *State of Ohio* (1893), 30 Cinc. Law Bull. 342; 11 Ohio Dec. Reprint, 894; where the Court of Common Pleas of Hamilton County sustained an act of April 14, 1892 (89 Ohio Laws, 269), which declared that any person who coerced or attempted to coerce employés by discharging or threatening to discharge them because of their connection with any lawful labor organization should be guilty of a misdemeanor and upon conviction fined or imprisoned. We are unable to find that this decision was ever directly reviewed; but in *State of Ohio* v. *Bateman* (1900), 10 Ohio Dec. 68; 7 Ohio N. P. 487, its authority was repudiated upon the ground that it had been in effect overruled by subsequent decisions of the state Supreme Court, and the same statute was held unconstitutional.

The right that plaintiff in error is now seeking to maintain was held by the Supreme Court of Kansas, in an earlier case, to be within the protection of the Fourteenth Amendment and therefore beyond legislative interference. In *Coffeyville Brick Co.* v. *Perry*, 69 Kansas, 297; 76 Pac. Rep. 848; 66 L. R. A. 185; 1 A. & E. Ann. Cas. 936; the court had under consideration Ch. 120 of the Laws of 1897 (Gen. Stat. 1901, §§ 2425, 2426), which declared it unlawful for any person, company, or corporation, or agent, officer, etc., to prevent employés from joining and belonging to any labor organization, and enacted that any such person, company, or corporation, etc., that coerced or attempted to coerce employés by discharging or threatening to discharge them because of their connection with such labor organization should be deemed guilty of a misdemeanor, and upon conviction subjected to a fine, and should also be liable to the person injured in punitive damages. It was attacked as violative of the Fourteenth Amendment, and also of the Bill of Rights of the state

constitution.[1] The court held it unconstitutional, saying (p. 299): "The right to follow any lawful vocation and to make contracts is as completely within the protection of the constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer but also his associates. He is at liberty to refuse to continue to serve one who has in his employ a person, or an association of persons, objectionable to him. In this respect the rights of the employer and employé are equal. Any act of the legislature that would undertake to impose on an employer the obligation of keeping in his service one whom, for any reason, he should not desire would be a denial of his constitutional right to make and terminate contracts and to acquire and hold property. Equally so would be an act the provisions of which should be intended to require one to remain in the service of one whom he should not desire to serve. . . . The business conducted by the defendant was its property, and in the exercise of this ownership it is protected by the constitution. It could abandon or discontinue its operation at pleasure. It had the right, beyond the possibility of legislative interference, to make any contract with reference thereto not in violation of law.

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[1] Constitution of the State of Kansas. . . . Bill of Rights.

Section 1. All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.

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Section 18. All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.

In the operation of its property it may employ such persons as are desirable, and discharge, without reason, those who are undesirable. It is at liberty to contract for the services of persons in any manner that is satisfactory to both. No legislative restrictions can be imposed upon the lawful exercise of these rights."

In *Railway Co.* v. *Brown*, 80 Kansas, 312; 102 Pac. Rep. 459, the same court passed upon Chapter 144 of the Laws of 1897 (Gen. Stat. 1901, §§ 2421–2424), which required the employer upon the request of a discharged employé to furnish in writing the true cause or reason for such discharge. The railway company did not meet this requirement, its "service letter," as it was called, stating only that Brown was discharged "for cause," which the court naturally held was not a statement of the cause. The law was held unconstitutional, upon the ground (80 Kansas, 315) that an employer may discharge his employé for any reason, or for no reason, just as an employé may quit the employment for any reason, or for no reason; that such action on the part of employer or employé, where no obligation is violated, is an essential element of liberty in action; and that one cannot be compelled to give a reason or cause for an action for which he may have no specific reason or cause, except, perhaps, a mere whim or prejudice.

In the present case the court did not repudiate or overrule these previous decisions, but on the contrary cited them as establishing the right of the employer to discharge his employé at any time, for any reason, or for no reason, being responsible in damages for violating a contract as to the time of employment, and as establishing, conversely, the right of the employé to quit the employment at any time, for any reason, or without any reason, being likewise responsible in damages for a violation of his contract with the employer. The court held the act of 1903 that is now in question to be distinguishable from the

act of 1897, upon grounds sufficiently indicated and answered by what we have already said.

In five other States the courts of last resort have had similar acts under consideration, and in each instance have held them unconstitutional. In *State* v. *Julow* (1895), 129 Missouri, 163; 31 S. W. Rep. 781; 29 L. R. A. 257; 50 Am. St. Rep. 443; the Supreme Court of Missouri dealt with an act (Missouri Laws 1893, p. 187), that forbade employers, on pain of fine or imprisonment, to enter into any agreement with an employé requiring him to withdraw from a labor union or other lawful organization, or to refrain from joining such an organization, or to "by any means attempt to compel or coerce any employé into withdrawal from any lawful organization or society." In *Gillespie* v. *The People* (1900), 188 Illinois, 176; 58 N. E. Rep. 1007; 52 L. R. A. 283; 80 Am. St. Rep. 176; the Supreme Court of Illinois held unconstitutional an act (Hurd's Stat. 1899, p. 844) declaring it criminal for any individual or member of any firm, etc., to prevent or attempt to prevent employés from forming, joining, and belonging to any lawful labor organization, and that any such person "that coerces or attempts to coerce employés by discharging or threatening to discharge them because of their connection with such lawful labor organization" should be guilty of a misdemeanor. In *State, ex rel. Zillmer* v. *Kreutzberg* (1902), 114 Wisconsin, 530; 90 N. W. Rep. 1098; 58 L. R. A. 748; 91 Am. St. Rep. 934; the court had under consideration a statute (Wisconsin Laws 1899, ch. 332), which, like the Kansas act now in question, prohibited the employer or his agent from coercing the employé to enter into an agreement not to become a member of a labor organization, as a condition of securing employment or continuing in the employment, and also rendered it unlawful to discharge an employé because of his being a member of any labor organization. The decision related to the latter prohibition, but this was denounced

upon able and learned reasoning that has a much wider reach. In *People* v. *Marcus* (1906), 185 N. Y. 257; 77 N. E. Rep. 1073; 7 L. R. A., N. S. 282; 113 Am. St. Rep. 902; 7 A. & E. Ann. Cas. 118; the statute dealt with (N. Y. Laws, 1887, ch. 688), as we have already said, was in substance identical with the Kansas act. These decisions antedated *Adair* v. *United States*. They proceed upon broad and fundamental reasoning, the same in substance that was adopted by this court in the *Adair Case*, and they are cited with approval in the opinion (208 U. S. 175). A like result was reached in *State, ex rel. Smith* v. *Daniels* (1912), 118 Minnesota, 155; 136 N. W. Rep. 584; with respect to an act that, like the Kansas statute, forbade an employer to require an employé or person seeking employment, as a condition of such employment, to make an agreement that the employé would not become or remain a member of a labor organization. This was held invalid upon the authority of the *Adair Case*. And see *Goldfield Mines Co.* v. *Goldfield Miners' Union*, 159 Fed. Rep. 500, 513.

Upon both principle and authority, therefore, we are constrained to hold that the Kansas act of March 13, 1903, as construed and applied so as to punish with fine or imprisonment an employer or his agent for merely prescribing, as a condition upon which one may secure employment under or remain in the service of such employer, that the employé shall enter into an agreement not to become or remain a member of any labor organization while so employed, is repugnant to the "due process" clause of the Fourteenth Amendment, and therefore void.

Judgment reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

MR. JUSTICE HOLMES, dissenting.

I think the judgment should be affirmed. In present conditions a workman not unnaturally may believe that

only by belonging to a union can he secure a contract that shall be fair to him. *Holden* v. *Hardy*, 169 U. S. 366, 397. *Chicago, Burlington & Quincy R. R.* v. *McGuire*, 219 U. S. 549, 570. If that belief, whether right or wrong, may be held by a reasonable man, it seems to me that it may be enforced by law in order to establish the equality of position between the parties in which liberty of contract begins. Whether in the long run it is wise for the workingmen to enact legislation of this sort is not my concern, but I am strongly of opinion that there is nothing in the Constitution of the United States to prevent it, and that *Adair* v. *United States*, 208 U. S. 161, and *Lochner* v. *New York*, 198 U. S. 45, should be overruled. I have stated my grounds in those cases and think it unnecessary to add others that I think exist. See further *Vegelahn* v. *Guntner*, 167 Massachusetts, 92, 104, 108. *Plant* v. *Woods*, 176 Massachusetts, 492, 505. I still entertain the opinions expressed by me in Massachusetts.

MR. JUSTICE DAY with whom MR. JUSTICE HUGHES concurs, dissenting:

The character of the question here involved sufficiently justifies, in my opinion, a statement of the grounds which impel me to dissent from the opinion and judgment in this case. The importance of the decision is further emphasized by the fact that it results not only in invalidating the legislation of Kansas, now before the court, but necessarily decrees the same fate to like legislation of other States of the Union.[1] This far-reaching result is attained because the statute is declared to be an infraction

[1] Statutes like the Kansas statute have been passed in California, Colorado, Connecticut, Indiana, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Porto Rico, and Wisconsin. Bulletin of the Bureau of Labor Statistics No. 148, Volumes 1 and 2; Labor Laws of the United States.

of the constitutional protection afforded under the Fourteenth Amendment to the Federal Constitution, which declares that no person shall be deprived of life, liberty or property without due process of law. The right of contract, it is said, is part of the liberty of the citizen, and to abridge it, as is done in this case, is declared to be beyond the legislative authority of the State.

That the right of contract is a part of individual freedom within the protection of this amendment, and may not be arbitrarily interfered with, is conceded. While this is true, nothing is better settled by the repeated decisions of this court than that the right of contract is not absolute and unyielding, but is subject to limitation and restraint in the interest of the public health, safety and welfare, and such limitations may be declared in legislation of the State. It would unduly extend what I purpose to say in this case to refer to all the cases in which this doctrine has been declared. One of them is: *Frisbie* v. *United States*, 157 U. S. 160, 165. In that case, it was declared, and in varying form has been repeated many times since:

"While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally

speaking, every citizen has a right freely to contract for the price of his labor, services, or property."

See also *Holden* v. *Hardy*, 169 U. S. 366, 391; *Atkin* v. *Kansas*, 191 U. S. 207; *Muller* v. *Oregon*, 208 U. S. 412, 421; *McLean* v. *Arkansas*, 211 U. S. 539; *Chicago, Burlington & Quincy R. R.* v. *McGuire*, 219 U. S. 549; *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186, 202; *Erie Railroad* v. *Williams*, 233 U. S. 685, 699. The *Erie Railroad Case* is a very recent deliverance of this court upon the subject, wherein it was declared:

"But liberty of making contracts is subject to conditions in the interest of the public welfare, and which shall prevail—principle or condition—cannot be defined by any precise and universal formula. Each instance of asserted conflict must be determined by itself, and it has been said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of the public. The burden is on him who attacks the legislation, and it is not sustained by declaring a liberty of contract. It can only be sustained by demonstrating that it conflicts with some constitutional restraint or that the public welfare is not subserved by the legislation. The legislature is, in the first instance, the judge of what is necessary for the public welfare, and a judicial review of its judgment is limited. The earnest conflict of serious opinion does not suffice to bring it within the range of judicial cognizance. *C., B. & Q. R. R. Co.* v. *McGuire*, 219 U. S. 549, 565; *German Alliance Insurance Co.* v. *Kansas*, 233 U. S. 389."

It is therefore the thoroughly established doctrine of this court that liberty of contract may be circumscribed in the interest of the State and the welfare of its people. Whether a given exercise of such authority transcends the limits of legislative authority must be determined in each case as it arises. The preservation of the police power of the States, under the authority of which that

great mass of legislation has been enacted which has for its purpose the promotion of the health, safety and welfare of the public, is of the utmost importance. This power was not surrendered by the States when the Federal Constitution was adopted, nor taken from them when the Fourteenth Amendment was ratified and became a part of the fundamental law of the Union. *Barbier* v. *Connolly*, 113 U. S. 27.

Of the necessity of such legislation, the local legislature is itself the judge, and its enactments are only to be set aside when they involve such palpable abuse of power and lack of reasonableness to accomplish a lawful end that they may be said to be merely arbitrary and capricious, and hence out of place in a government of laws and not of men, and irreconcilable with the conception of due process of law. McGehee on "Due Process of Law," page 306, and cases from this court therein cited.

By this it is not meant that the legislative power is beyond judicial review. Such enactments as are arbitrary or unreasonable and thus exceed the exercise of legislative authority in good faith, may be declared invalid when brought in review by proper judicial proceedings. This is necessary to the assertion and maintenance of the supremacy of the Constitution.

Conceding then that the right of contract is a subject of judicial protection, within the authority given by the Constitution of the United States, the question here is, was the power of the State so arbitrarily exercised as to render its action unconstitutional and therefore void? It is said that this question is authoritatively determined in this court, in the case of *Adair* v. *United States*, 208 U. S. 161. In that case, a statute passed by the Congress of the United States, under supposed sanction of the power to regulate interstate commerce, was before this court, and it was there decided that the right of contract protected by the Fifth Amendment to the Constitution,

providing that no person shall be deprived of life, liberty or property without due process of law, avoided a statute which undertook to make it a crime to discharge an employé simply because of his membership in a labor organization. The feature of the statute which is here involved, making it an offense to require any employé, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become a member of any labor corporation, association or organization,—a provision exactly similar to that of the Kansas statute now under consideration,—was not before the court upon the charge made or the facts shown, and this provision was neither considered nor decided upon in reaching the conclusion that an employer could not be made a criminal because he discharged an employé simply because of his membership in a labor organization. In the course of the opinion this fact was more than once stated, and the question before the court declared to be (208 U. S., p. 171):

"May Congress make it a criminal offense against the United States—as by the tenth section of the act of 1898 it does—for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employé from service simply because of his membership in a labor organization?"

Such was the question before the court, and that there might be no mistake about it, at the close of the opinion, the part of the act upon which the defendant in that case was convicted was declared to be separable from the other parts of the act, and that feature of the statute the only subject of decision. Mr. Justice Harlan, concluding the opinion of the court said (p. 180):

"We add that since the part of the act of 1898 upon which the first count of the indictment is based, and upon which alone the defendant was convicted, *is severable from its other parts*, and as what has been said is sufficient to

dispose of the present case, *we are not called upon to consider other and independent provisions of the act*, such, for instance, as the provisions relating to arbitration. *This decision is therefore restricted to the question of the validity of the particular provision in the act of Congress making it a crime against the United States for an agent or officer of an interstate carrier to discharge an employé from its service because of his being a member of a labor organization.*" (Italics mine.)

In view of the feature of the statute involved, the charge made, and this express reservation in the opinion of the court as to other features of the statute, I am unable to agree that that case involved or decided the one now at bar.

There is nothing in the statute now under consideration which prevents an employer from discharging one in his service at his will. The question now presented is, May an employer, as a condition of present or future employment, require an employé to agree that he will not exercise the privilege of becoming a member of a labor union, should he see fit to do so? In my opinion, the cases are entirely different, and the decision of the questions controlled by different principles. The right to join labor unions is undisputed, and has been the subject of frequent affirmation in judicial opinions. Acting within their legal rights, such associations are as legitimate as any organization of citizens formed to promote their common interest. They are organized under the laws of many States, by virtue of express statutes passed for that purpose, and, being legal, and acting within their constitutional rights, the right to join them, as against coercive action to the contrary may be the legitimate subject of protection in the exercise of the police authority of the States. This statute, passed in the exercise of that particular authority called the police power, the limitations of which no court has yet undertaken precisely to define, has for its avowed

purpose the protection of the exercise of a legal right, by preventing an employer from depriving the employé of it as a condition of obtaining employment. I see no reason why a State may not, if it chooses, protect this right, as well as other legal rights.

But it is said that the contrary must necessarily result, if not from the precise matter decided in the *Adair Case*, then from the principles therein laid down, and that it is the logical result of that decision that the employer may, as a condition of employment, require an obligation to forego the exercise of any privileges because of the exercise of which an employé might be discharged from service. I do not concede that this result follows from anything decided in the *Adair Case*. That case dealt solely with the right of an employer to terminate relations of employment with an employé, and involved the constitutional protection of his right so to do, but did not deal with the conditions which he might exact or impose upon another as a condition of employment.

The act under consideration is said to have the effect to deprive employers of a part of their liberty of contract, for the benefit of labor organizations. It is urged that the statute has no object or purpose, express or implied, that has reference to health, safety, morals, or public welfare, beyond the supposed desirability of leveling inequalities of fortune by depriving him who has property of some part of his "financial independence."

But this argument admits that financial independence is not independence of law or of the authority of the legislature to declare the policy of the State as to matters which have a reasonable relation to the welfare, peace and security of the community.

This court has many times decided that the motives of legislators in the enactment of laws are not the subject of judicial inquiry. Legislators, state and Federal, are entitled to the presumption that their action has been in

good faith and because of conditions which they deem proper and sufficient to warrant the action taken. Speaking for this court in *Ex parte McCardle*, 7 Wall. 506, 514, Chief Justice Chase summed up the doctrine in a sentence when he said: "We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution." In Cooley's Constitutional Limitations, 7th Ed., 257, that eminent author says: "They [the courts] must assume that legislative discretion has been properly exercised. If evidence was required, it must be supposed that it was before the legislature when the act was passed; and if any special finding was required to warrant the passage of the particular act, it would seem that the passage of the act itself might be held equivalent to such finding." "The rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferable from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives, considered as the moral inducements for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile." *Soon Hing* v. *Crowley*, 113 U. S. 703, 710. "We must assume that the legislature acts according to its judgment for the best interests of the State. A wrong intent cannot be imputed to it." *Florida Central &c. R. R.* v. *Reynolds*, 183 U. S. 471, 480.

The act must be taken as an attempt of the legislature to enact a statute which it deemed necessary to the good

order and security of society. It imposes a penalty for "coercing or influencing or making demands upon or requirements of employés, servants, laborers, and persons seeking employment." It was in the light of this avowed purpose that the act was interpreted by the Supreme Court of Kansas, the ultimate authority upon the meaning of the terms of the law. Of course, if the act is necessarily arbitrary and therefore unconstitutional, mere declarations of good intent cannot save it, but it must be presumed to have been passed by the legislative branch of the state government in good faith, and for the purpose of reaching the desired end. The legislature may have believed, acting upon conditions known to it, that the public welfare would be promoted by the enactment of a statute which should prevent the compulsory exaction of written agreements to forego the acknowledged legal right here involved, as a condition of employment in one's trade or occupation.

It would be impossible to maintain that because one is free to accept or refuse a given employment, or because one may at will employ or refuse to employ another, it follows that the parties have a constitutional right to insert in an agreement of employment any stipulation they choose. They cannot put in terms that are against public policy either as it is deemed by the courts to exist at common law or as it may be declared by the legislature as the arbiter within the limits of reason of the public policy of the State. It is no answer to say that the greater includes the less and that because the employer is free to employ, or the employé to refuse employment, they may agree as they please. This matter is easily tested by assuming a contract of employment for a year and the insertion of a condition upon which the right of employment should continue. The choice of such conditions is not to be regarded as wholly unrestricted because the parties may agree or not as they choose. And if the State may pro-

hibit a particular stipulation in an agreement because it is deemed to be opposed in its operation to the security and well being of the community, it may prohibit it in any agreement whether the employment is for a term or at will. It may prohibit the attempt in any way to bind one to the objectionable undertaking.

Would anyone contend that the State might not prohibit the imposition of conditions which should require an agreement to forego the right on the part of the employé to resort to the courts of the country for redress in the case of disagreement with his employer? While the employé might be discharged in case he brought suit against an employer if the latter so willed, it by no means follows that he could be required, as a condition of employment, to forego a right so obviously fundamental as the one supposed. It is therefore misleading to say that the right of discharge necessarily embraces the right to impose conditions of employment which shall include the surrender of rights which it is the policy of the State to maintain.

Take another illustration: The right to exclude a foreign corporation from carrying on a purely domestic business in the State has been distinctly recognized by decisions of this court; yet it has been held, and is now settled law, that it is beyond the authority of the State to require a corporation doing business of this character to file in the office of the Secretary of State a written agreement that it will not remove a suit, otherwise removable, to a Federal court of the United States. *Insurance Co.* v. *Morse*, 20 Wall. 445. In that case, the right to exclude was held not to include the right to impose any condition under which the corporation might do business in the State. In that connection this court said:

"A man may not barter away his life or his freedom, or his substantial rights. In a criminal case, he cannot, as was held in *Cancemi's Case*, be tried in any other manner than by a jury of twelve men, although he consent in open

court to be tried by a jury of eleven men. In a civil case he may submit his particular suit by his own consent to an arbitration, or to the decision of a single judge. So he may omit to exercise his right to remove his suit to a Federal tribunal, as often as he thinks fit, in each recurring case. In these aspects any citizen may no doubt waive the rights to which he may be entitled. He cannot, however, bind himself in advance by an agreement, which may be specifically enforced, thus to forfeit his rights at all times and on all occasions, whenever the case may be presented." *Insurance Co.* v. *Morse*, 20 Wall. 445, 451.

It may be that an employer may be of the opinion that membership of his employés in the National Guard, by enlistment in the militia of the State, may be detrimental to his business. Can it be successfully contended that the State may not, in the public interest, prohibit an agreement to forego such enlistment as against public policy? Would it be beyond a legitimate exercise of the police power to provide that an employé should not be required to agree, as a condition of employment, to forego affiliation with a particular political party, or the support of a particular candidate for office? It seems to me that these questions answer themselves. There is a real and not a fanciful distinction between the exercise of the right to discharge at will and the imposition of a requirement that the employé, as a condition of employment, shall make a particular agreement to forego a legal right. The *agreement* may be, or may be declared to be, against public policy, although the right of discharge remains. When a man is discharged, the employer exercises his right to declare such action necessary because of the exigencies of his business, or as the result of his judgment for other reasons sufficient to himself. When he makes a stipulation of the character here involved essential to future employment, he is not exercising a right to discharge, and may not wish to discharge the employé when, at a

subsequent time, the prohibited act is done. What is in fact accomplished, is that the one engaging to work, who may wish to preserve an independent right of action, as a condition of employment, is coerced to the signing of such an agreement against his will, perhaps impelled by the necessities of his situation. The State, within constitutional limitations, is the judge of its own policy and may execute it in the exercise of the legislative authority. This statute reaches not only the employed but as well one seeking employment. The latter may never wish to join a labor union. By signing such agreements as are here involved he is deprived of the right of free choice as to his future conduct, and must choose between employment and the right to act in the future as the exigencies of his situation may demand. It is such contracts, having such effect, that this statute and similar ones seek to prohibit and punish as against the policy of the State.

It is constantly emphasized that the case presented is not one of coercion. But in view of the relative positions of employer and employed, who is to deny that the stipulation here insisted upon and forbidden by the law is essentially coercive? No form of words can strip it of its true character. Whatever our individual opinions may be as to the wisdom of such legislation, we cannot put our judgment in place of that of the legislature and refuse to acknowledge the existence of the conditions with which it was dealing. Opinions may differ as to the remedy, but we cannot understand upon what ground it can be said that a subject so intimately related to the welfare of society is removed from the legislative power. Wherein is the right of the employer to insert this stipulation in the agreement any more sacred than his right to agree with another employer in the same trade to keep up prices? He may think it quite as essential to his "financial independence" and so in truth it may be if he alone is to be considered. But it is too late to deny that the legis-

lative power reaches such a case. It would be difficult to select any subject more intimately related to good order and the security of the community than that under consideration—whether one takes the view that labor organizations are advantageous or the reverse. It is certainly as much a matter for legislative consideration and action as contracts in restraint of trade.

It is urged that a labor organization—a voluntary association of working-men—has the constitutional right to deny membership to any man who will not agree that during such membership he will not accept or retain employment in company with non-union men. And it is asserted that there cannot be one rule of liberty for the labor organization and its members and a different and more restrictive rule for employers.

It of course is true, for example, that a Church may deny membership to those who unite with other denominations, but it by no means follows that the State may not constitutionally prohibit a railroad company from compelling a working-man to agree that he will, or will not, join a particular church. An analogous case,—viewed from the employer's standpoint, would be: Can the State, in the exercise of its legislative power, reach concerted effort of employés intended to coerce the employer as a condition of hiring labor that he shall engage in writing to give up his privilege of association with other employers in legal organizations, corporate or otherwise, having for their object a united effort to promote by legal means that which employers believe to be for the best interest of their business?

I entirely agree that there should be the same rule for employers and employed, and the same liberty of action for each. In my judgment, the law may prohibit coercive attempts, such as are here involved, to deprive either of the free right of exercising privileges which are theirs within the law. So far as I know, no law has undertaken

to abridge the right of employers of labor in the exercise of free choice as to what organizations they will form for the promotion of their common interests, or denying to them free right of action in such matters.

But it is said that in this case all that was done in effect was to discharge an employé for a cause deemed sufficient to the employer—a right inherent in the personal liberty of the employer protected by the Constitution. This argument loses sight of the real purpose and effect of this and kindred statutes. The penalty imposed is not for the discharge but for the attempt to coerce an unwilling employé to agree to forego the exercise of the legal right involved as a condition of employment. It is the requirement of such agreements which the State declares to be against public policy.

I think that the act now under consideration, and kindred ones, are intended to promote the same liberty of action for the employé as the employer confessedly enjoys. The law should be as zealous to protect the constitutional liberty of the employé as it is to guard that of the employer. A principal object of this statute is to protect the liberty of the citizen to make such lawful affiliations as he may desire with organizations of his choice. It should not be necessary to the protection of the liberty of one citizen that the same right in another citizen be abridged or destroyed.

If one prohibitive condition of the sort here involved may be attached, so may others, until employment can only be had as the result of written stipulations, which shall deprive the employé of the exercise of legal rights which are within the authority of the State to protect. While this court should, within the limitations of the constitutional guaranty, protect the free right of contract, it is not less important that the State be given the right to exert its legislative authority, if it deems best to do so, for the protection of rights which inhere in the privileges of the citizen of every free country.

The Supreme Court of Kansas in sustaining this statute, said that "employés as a rule are not financially able to be as independent in making contracts for the sale of their labor as are employers in making a contract of purchase thereof," and in reply to this it is suggested that the law cannot remedy inequalities of fortune, and that so long as the right of property exists, it may happen that parties negotiating may not be equally unhampered by circumstances.

This view of the Kansas court, as to the legitimacy of such considerations, is in entire harmony, as I understand it, with the former decisions of this court in considering the right of state legislatures to enact laws which shall prevent the undue or oppressive exercise of authority in making contracts with employés. In *Holden* v. *Hardy*, 169 U. S. 366, this court considering legislation limiting the number of hours during which laborers might be employed in a particular employment, said:

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employés, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority. . . . But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to

the contract shall be protected against himself. 'The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer.'" (Page 397.)

This language was quoted with approval in *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549, 570, in which a statute of Iowa was sustained, prohibiting contracts limiting liability for injuries made in advance of the injuries received, and providing that the subsequent acceptance of benefits under such contracts should not constitute satisfaction for injuries received after the contract. Certainly it can be no substantial objection to the exercise of the police power that the legislature has taken into consideration the necessities, the comparative ability, and the relative situation of the contracting parties. While all stand equal before the law, and are alike entitled to its protection, it ought not to be a reasonable objection that one motive which impelled an enactment was to protect those who might otherwise be unable to protect themselves.

I therefore think that the statute of Kansas, sustained by the Supreme Court of the State, did not go beyond a legitimate exercise of the police power, when it sought, not to require one man to employ another against his will, but to put limitations upon the sacrifice of rights which one man may exact from another as a condition of employment. Entertaining these views, I am constrained to dissent from the judgment in this case.

I am permitted to say that MR. JUSTICE HUGHES concurs in this dissent.